

The Sustainability of the EU's Model for Climate Diplomacy

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1. Introduction

Politicians concerned with the institutional developments of the European Union (EU) regularly emphasize the importance of unity in the EU's external representation in international affairs. In the field of climate change, EU Member States remain remarkably united. Despite US opposition, the EU successfully convinced other countries to ratify the Kyoto Protocol, thereby ensuring its entry into force in 2005. Subsequently, the EU sought to continue its leadership by actively promoting the issue of climate change in various international discussions, such as the G8 summits and the UN General Assembly. It aims to take the lead in, and set the agenda for, the negotiations on a future climate deal in Copenhagen in December 2009.

The success of the EU in the future climate negotiations depends on a number of factors, including the extent to which other countries are willing to commit to meaningful emission reduction commitments (in times of economic downturn), the EU's own ability to reduce emissions at a low cost and its ability to offer resources for adaptation and technology transfer to developing countries.² Its performance will obviously also be influenced by the way it organises its climate diplomacy. This focus of this chapter is on the way the EU decides internally on its international climate negotiation position. Is it operating as a state-like entity or a strong coalition of its Member States? What are the internal procedures to decide upon the negotiation stance and strategy, and do these procedures enable or constrain its performance in the negotiations? How did the EU's system operate in previous climate conferences and can we expect it to function well in the future? The focus will be on factors that explain the EU's strong climate diplomacy of recent years and whether this is likely to continue in the future.

The chapter proceeds as follows. Section 2 discusses how the EU operates as a global actor and which factors are most likely to influence its performance in international negotiations. Factors identified are the degree of European Community (EC) competence, the homogeneity of preferences among the EU Member States and processes of EU socialisation among those representatives involved in the negotiations. The degree of EC competence influences how processes of EU coordination and external representation are organised. It could be considered an enabling factor for unity, but it does not provide a guarantee that Member States will agree upon a common position.³ Therefore it is also relevant to analyse the

¹ The author would like to thank Bart Kerremans and the two editors of this book for their useful comments on earlier versions of this chapter.

² Van Schaik and Van Hecke 2008.

³ Gstöhl 2009.

homogeneity of preferences of the Member States (and the Commission), and EU socialisation, such that national delegates involved in the negotiations consider it most appropriate to operate with a common European position.

Section 3 describes how the EU organises its external representation in the international climate negotiations. On the basis of a brief analysis of European interests and preferences, it discusses why EU Member States have agreed relatively easily on a common international position and whether this is likely to continue. The section will then analyse how informal processes contribute to EU cooperation in the international climate negotiations. The analysis is based on a document and literature study and a small number of interviews with civil servants involved in EU coordination of international climate policy.⁴ Moreover, the research builds upon earlier work by the author on the EU's institutional and governance features in the field of climate change for which a larger number of interviews were conducted, and on a number of similar studies by others.⁵

Section 4 looks at whether the current model for coordination and external representation is likely to be sustained into the future. It will discuss alternative models and under which circumstances they may become relevant (in legal and political terms). It will discuss in particular what changes may occur if the Lisbon Treaty enters into force, which is uncertain at the time of writing.

The concluding section elaborates on what the experiences in the climate negotiations can teach us with regard to how we can conceive of the EU in international affairs and what lessons can be drawn for other negotiations.

2. The EU as a Global Actor

2.1 The EU and the multilateral system

Since the end of the twentieth century, there has been a rapid expansion in international organisations and institutions. In an increasingly globalised world, international cooperation is considered a necessity to safeguard and increase the problem-solving capacity of nation states. The EU is a staunch supporter of the multilateral system. It believes it is possible to establish international agreements with which states comply, as is done within the EU in a most advanced form. It considers international policy cooperation the preferred option, rather than policy competition, oppression or conflict. It, moreover, often considers international agreements to be in its interest, since it enables the EU to export its own (frequently high) standards. International agreements can guarantee the level playing field that helps (European) companies to compete on equal terms in the world.

However, the international system can still be largely characterised as anarchic, where nations have significant freedom to decide their own course. They attach much importance to their sovereignty, meaning the freedom from outside interference and the legitimate right of states to decide upon their own internal and external policies. When sovereign states do not abide by international rules, there is often little that can be done. Only the UN Security Council has some official status in condemning

⁴ About five interviews were held with representatives of EU Member States who have been involved in the climate negotiations.

⁵ Van Schaik and Egenhofer 2005; Groenleer and Van Schaik 2007; Oberthür and Roche Kelly 2008; Costa 2008; Damro 2008; Delreux 2008; Birkel forthcoming.

governments violating the rights of other states. The International Criminal Court and International Court of Justice provide a channel of last resort in legal terms, but rely very much on the cooperation of states. Finally, compliance systems of international organisations and treaties, such as the WTO dispute settlement system and the Kyoto compliance committee, seem to indicate that some hierarchy is adhered to. Their effectiveness, however, still very much depends on states accepting their authority and abiding by their rules.

Within the EU, international agreements are taken very seriously. EU legislation is often directly derived from international agreements, particularly in trade-related policy areas, such as food safety and environmental protection. Once European laws are adopted, they supersede the laws of the EU Member States. Compliance is ensured by the European Court of Justice, which can impose financial penalties on Member States that infringe EU law. A conviction by the Court is also considered a breach of EU solidarity, which damages the reputation of a Member State as a reliable partner. As a result, even though the EU system is very much dependent upon the proper implementation and enforcement of EU policies by the Member States, the level of compliance with EU law is relatively high. The EU believes that it is possible to have similar compliance mechanisms at the international level. In that case, international agreements contribute to the EU's ability to set ambitious regulatory standards without damaging competitiveness. For other states it may also be advantageous to join such international agreements, for instance because they also want to set higher standards, or because they want to improve trade relations with the EU. Also, the costs of compliance are easier to bear with the knowledge that competitors will stick to the same rules and thus will face similar costs.

In this context, it is particularly interesting to see how the EU, itself a *sui generis* system between an international organisation and a supranational state, operates within the international system. Laatikainen and Smith label this phenomenon “intersecting multilateralisms”.⁶ Looking at the interface between the EU and various UN organisations, they consider it essential to question whether the EU is an actor in its own right within the UN or whether the EU merely serves as a diplomatic forum for Member States.⁷ Indeed, in some international organisations (e.g. the WTO, FAO and Codex Alimentarius) the EU behaves like a state party, enjoying membership and a uniform representation, whereas in other international organisations, the Member States are the most important EU actors (e.g. UN Security Council, IMF, World Bank).

2.2 EU external unity

Most researchers studying EU foreign policy assert that the way the EU decides upon its international positions and organises its external representation influences its effectiveness in international negotiations.⁸ It would influence its capacity to negotiate and, thereby, its bargaining power.⁹ The argument that EU foreign policy-making needs to be reformed to make the EU a more effective actor in world affairs has also been a prevailing rationale in the discussions on EU institutional reform leading

⁶ Laatikainen and Smith 2006, 3.

⁷ Laatikainen and Smith 2006.

⁸ Keukeleire and MacNaughton 2008; Cameron 2007; Sapir 2007; Bretherton and Vogler 2006; Vanhoonaeker 2005.

⁹ Meunier 2000; Frieden 2004; Gstöhl 2009.

eventually to the Lisbon Treaty. Agreed reform proposals, such as the establishment of an EU foreign policy coordinator, or High Representative, focus on establishing a more uniform external representation.¹⁰

Although it seems reasonable to assume that a more unified EU stance in international affairs would increase its influence, only a small number of case studies¹¹ have systematically analysed the EU's effectiveness or performance in international negotiations and have related it back to its institutional set-up. This is not surprising, since it is rather complicated to measure the EU's effectiveness in international negotiations.¹² Whether the EU is effective is very much influenced by its negotiating partners and subject to the perceptions of those who were involved in the negotiations, or of those who observed them (e.g. media). Here we will also focus on these perceptions of effectiveness. Where possible, specific examples are given of issues in which the EU managed to convince negotiating partners to follow its preferred option.

In general, it is expected that the EU is more effective when it can keep its ranks closed. This is confirmed by other research,¹³ but it is not clear whether more involvement of the European Commission strengthens EU unity, or whether the rotating EU presidency is in a better position to do this. The Commission would be a more permanent partner able to build up more stable contact, invest in diplomatic skills and capacity, and work on the basis of a common European interest. The alternative of the rotating Presidency leading the EU in international affairs has the benefit that this actor is one of the Member States and is less able to build up an autonomous position, since it only leads for half a year.¹⁴ Neither the Commission, nor the Presidency can be expected to obtain a *carte blanche* from the Member States. Control systems by the Member States will be established making it likely that tension will occur (as in all "principal-agent" constellations). Such tension is more likely to occur with the Commission since it would function on a permanent basis and is not one of the Member States. It is not fully clear how these trade-offs between the (possible) advantages and disadvantages of the Commission or the Presidency in the lead affect EU unity and, by extension, EU performance in the international negotiations.

With this in mind, the degree of unity displayed by the EU in its external representation in the climate negotiations will be analysed. To identify and understand the degree of unity in external representation, three issues will be examined: the degree of EC competence, the degree of preference homogeneity, and the degree of EU socialisation evident among representatives of the EU Member States. It is particularly interesting to question the extent to which EU Member States consider it a deliberate choice to unite in their external representation, or whether they consider it merely a legal obligation. Under which conditions do they consider it advantageous, and does it improve their effectiveness in international negotiations? According to a realist or intergovernmentalist view, for example, EU Member States would only agree to bundle their positions to the extent it is in their interest to do so.¹⁵ They

¹⁰ Avery et al. 2007; Aggestam et al. 2007; Duke 2008; Van Schaik 2008.

¹¹ E.g. Smith 2006; Rhinard and Kaeding 2006.

¹² Oberthür 2009.

¹³ Laatikainen and Smith 2006; Bretherton and Vogler 2006; Jørgensen, 2009.

¹⁴ Schout and Van Schaik 2008.

¹⁵ Smith 2006; Frieden 2004.

would consider that operating jointly strengthens their bargaining power in the negotiations, while bundling expertise and resources brings further benefits.

2.3 Competence

Scholars looking at the influence of institutions have pointed out that Member States' options and preferences are influenced by the legal rules and procedures and by the informal institutional features that may be at work.¹⁶ In the field of EU external relations, procedures for external representation are strongly related to the degree of EC competence. When EU Member States transfer legislative powers to the EC level, the EC also obtains a competence to represent the EC externally ("principle of implied powers").¹⁷ Deciding who acts as lead negotiator depends on whether the main thrust of the matter lies with the EC, in which case the Commission is in the lead, or with the Member States, in which case the rotating Presidency of the EU Council is in charge. Member States may not always realise the implications for international negotiations when (internal) competences are transferred through amending the EC treaty or adopting EC legislation. With an issue such as climate change, where both the EC and the Member States possess competence ("shared competence"), external representation is taken care of jointly, with Member States usually preferring to appoint the rotating Presidency as lead negotiator.

In political terms, authority over external representation is a key feature of state sovereignty. Having a single representative to speak on behalf of the EU in international negotiations could hence be viewed as a sign of statehood. Within the inter-state system of international organisations, involvement of the EU often leads to questions on how to treat this "unidentified political object". The transfer of competence to the EU in international settings is also not always welcomed by the EU Member States. The political-sensitive issues of war and peace, for example, have led Member States to prevent "an EU take-over" of foreign and security policy. With other external policy issues the transfer of competence is also sensitive. If Member States consider it is to their advantage to operate as a European bloc, for instance because they can relatively easily agree on a joint stance, they may see the advantages of a unified external representation even when it is not legally obligatory. However, if they believe that operating with a joint stance only leads to a lowest common denominator position or no agreement at all, they may be less enthusiastic. In such circumstances, they may also call legal provisions into question. In fact, many cases have been brought to the European Court of Justice in which the Commission and Member States have fought over who had the authority of external representation in international organisations.¹⁸

2.4 Preference homogeneity

Whether the EU can operate in unity also depends upon outside recognition and upon the willingness of Member States to agree upon a common view.¹⁹ Inconsistencies are likely to exist between the demands and interests of 27 Member States at differing levels of economic development and political preferences.

¹⁶ Vanhoonacker 2005.

¹⁷ Eeckhout 2004; Hoffmeister 2007.

¹⁸ Eeckhout 2004.

¹⁹ Gstöhl 2009; Vogler 2005, 838.

Nevertheless, there are a number of reasons why we can expect EU Member States' positions to be homogeneous. First of all, EU Member States share a considerable part of their cultural heritage. This influences their political preference on certain issues, such as the role of democracy, the death penalty, the position of women, etc. Secondly, on the world scale EU Member States tend to have a relatively similar geographic interest. For the EU, the Balkans, Africa, the Middle East and Russia represent regions it needs to engage with closely. Thirdly, despite differences in levels of prosperity, none of the EU Member States are developing countries, or fragile states. Instead they have relatively well-functioning democratic governance systems. Fourthly, and perhaps most importantly, EU Member States have a common internal market governed by extensive common regulation. This means that EU Member States have a common interest in promoting their regulatory standards in international bodies. It also means that unity in external representation is a necessity the moment common EU legislation is in place or could be decided upon, since legal uncertainty could otherwise emerge with regard to whether European or international agreements should be adhered to. This is why the European Court of Justice established the principle of parallel competences.²⁰ Lastly, there can be issue-specific interests. In the field of climate change, energy mix and infrastructure, for instance, greatly influence the interest of states.

On the basis of the factors outlined above, we can expect the preferences of EU Member States to be rather homogeneous in international affairs. However, on some issues, EU Member States can be very much divided. Prominent examples include the divisions over the war in Iraq and more recently over the recognition of Kosovo as an independent state. A complicating factor is that common EU positions, frequently, have to be decided by consensus, meaning that, in theory, any one Member State can veto an international position. In practice the veto is considered a "nuclear option", but the mere possibility of using it can at times prevent the EU from adopting ambitious and progressive common positions. Diplomats often complain about having to operate with a lowest common denominator position. Hence, when voting can be used to adopt a negotiating mandate, the likelihood of agreeing upon a more ambitious position is greater, at least in theory.²¹ Preference homogeneity among all EU Member States is in that scenario less important, since a minority can be outvoted.

2.5 EU socialisation

The influence of informal norms on EU unity becomes clear when looking at processes of EU socialisation emerging from institutionalised coordination practices between the Member States. Regardless of which legal rules are in place for external representation, diplomats may just consider it "appropriate" to collaborate with their European partners in international negotiations.²² Outsiders may for instance always approach them as a European actor. Processes of EU coordination and meetings may reinforce their allegiance.

Previous research has demonstrated that experts participating in EU working groups and committees can feel more affiliated with their European counterparts than with their national colleagues from other departments.²³ Often they share a common

²⁰ Eeckhout 2004.

²¹ Frieden 2004.

²² Smith 2006.

²³ Beyers and Trondal 2005.

policy-specific orientation. Sometimes they consider that a considerable part of their work consists of explaining and promoting a commonly agreed European policy to national colleagues. Of course, there are also national representatives who operate in Brussels and jealously guard their national interests and positions, but it can be expected that, particularly with regard to international affairs, the moment an international position can be agreed upon, EU Member States will be keen to work together to promote their view to national colleagues and non-EU states. Here we see the close relationship between preference homogeneity and socialisation; both can reinforce each other, but if one is lacking, EU unity in external representation is unlikely to be strong.

2.6 Other factors influencing EU performance in international negotiations

EC competence, preference homogeneity and EU socialisation can thus be expected to substantially affect the EU's unity in external representation and therefore influence the EU's effectiveness in the negotiations. In this chapter somewhat less attention is devoted to other, more contextual, or incidental factors that may influence the EU's performance, such as the acceptance of a unified external representation by non-EU actors,²⁴ issue-specific power such as commercial interests,²⁵ the negotiating environment,²⁶ and the influence of key individuals involved in the negotiations. These are considered less structural or subordinate to the factors outlined above. For example, commercial interests can be reflected in preferences and an influential person usually relies on a strong team. Where relevant, these factors are still elaborated in the section on the general characteristics on the EU's internal procedures for operating in the climate negotiations, but they are not the main focus of this chapter.

3. EU coordination and external representation in the international climate negotiations

Climate change, by definition, is an international issue and is one of the key priority issues of the EU's external relations. Like many other environmental issues, it is a policy problem that crosses national borders. Its "public good" character implies a need for inter-state cooperation; otherwise self-interested states may opt to let other states invest in greenhouse gas (GHG) emission reductions, whilst benefiting from the result. Even though scientists indicate swift action to avoid dangerous climate change is required, international agreement on an international climate deal should not be taken for granted.²⁷ National governments may focus on short-term interests, may consider the costs of climate policies burdensome, may argue that other states have to carry more of the burden, or have other reasons not to agree to take action. This makes international climate negotiations a challenging endeavour, and also at time jeopardises the ability of EU Member States to agree to an ambitious climate policy.

In this section we will analyse to what extent EC competence exists with regard to international climate policy, how homogeneous the preferences of EU Member States have been and whether EU socialisation processes have emerged in the EU's climate diplomacy. The degree of unity in external representation evident in the formal

²⁴ Groenleer and Van Schaik 2007.

²⁵ Gstöhl 2009.

²⁶ Meunier 2000; Rhinard and Kaeding 2006.

²⁷ Intergovernmental Panel on Climate Change 2007.

negotiations, and in the corridors and informal negotiation groups, will be analysed in more depth and considered with regard to the EU's effectiveness in the negotiations.

3.1 Competence

Climate change, like other environmental policies, is an area where Member States share competence with the EC. The legal entity of the EU, the European Community (EC), is a Party to regional and international environmental agreements, alongside states, including the EU Member States. This practice has evolved since the late 1970s when the then EEC joined the 1979 UNECE Convention on Long-Range Transboundary Air Pollution and, later, the 1985 Vienna Convention for the Protection of the Ozone Layer at the global level.²⁸ At the Earth Summit in Rio de Janeiro in 1992 (the United Nations Conference on Environment and Development), it was agreed that the EC could also become a party to the United Nations Framework Convention on Climate Change (UNFCCC).²⁹ As in the other environmental agreements mentioned, the EC does not have separate voting rights in the UNFCCC and participates as a Regional Economic Integration Organisation (REIO), a category created especially for the EC.³⁰

Although more and more EU climate legislation has been adopted over time, the shared competence has been translated into a rather intergovernmental model in the international negotiations. Member States decide by consensus and the half-yearly rotating EU Presidency is the EU's main spokesperson.³¹ In the most important bilateral negotiations and smaller negotiating sessions (e.g. "friends of the chair sessions"), the Presidency is assisted by the Commission and the incoming EU Presidency. Jointly they are called the EU troika, which is sometimes complemented by the Council Secretariat, as well as the bigger EU Member States.

The Commission's contribution is mostly related to it leading the formulation of new climate legislation within the EU, which is adopted through the normal Community method of decision-making (Commission proposes, Council and European Parliament co-decide). Because it initiates new legislation and oversees its implementation, the Commission is in the best position to monitor whether the EU will be able to meet international climate commitments and to testify to its negotiating partners about the effectiveness of EU climate policies. Although the European Parliament has co-decision power with regard to EU climate legislation, it only has an advisory role when it comes to the EU's position in the international climate negotiations. Members of the European Parliament attend the international climate conferences, but they are neither allowed to attend the meetings where the Member States and the Commission decide upon the EU position, nor to speak on behalf of the EU to the press or negotiating partners.

The EU position is adopted in the Council of Ministers. Within the Council, climate change is the prerogative of the Environment Ministers, but other Council formations

²⁸ Vogler and Stephan 2007, 296.

²⁹ Damro 2006.

³⁰ The REIO formulation was invented within the context of the 1979 Long Range Transboundary Air Pollution Convention (LRTAP) and afterwards used in other environmental conventions and international institutions, cf. Vogler and Bretherton 2006. In theory, other regional integration organisations may also use the construction in future (e.g. Mercosur, ASEAN), provided their Member States delegate relevant powers to them.

³¹ Oberthür and Roche Kelly 2008; Groenleer and Van Schaik 2007.

and the Presidents and Prime Ministers meeting in the European Council also discuss the issue. The Council Working Party on International Environmental Issues (WPIEI, Climate Change formation) and about eight expert groups on specific issues carry out the preparatory work. The WPIEI is composed of senior officials from Environment Ministries and the Commission's DG Environment.³² During climate negotiation sessions, adjustments can be made in EU coordination meetings where delegates of the Member States meet on a daily basis. The same officials that form the WPIEI usually also attend the EU coordination meetings, unless the Ministers arrive and take over from the senior officials.

Since the Presidency is in the lead, the EU position, or negotiating mandate, is recorded in the Council Conclusions of the Environment Council and, more recently, in the Presidency Conclusions of the European Council, as well as in issue-specific EU submissions and position papers. The conclusions are publicly available, but fallback positions and the negotiating strategy that accompany them and are also discussed in the Council, are not disclosed. The Presidency takes the lead in drafting the conclusions. The Commission provides input through Communications in which it outlines its position and suggestions to the Council. During the UN climate conference in Copenhagen in December 2009, Sweden holds the EU Presidency.

Since the workload for the Council Presidency has at times been overwhelming, and because it was deemed important to ensure continuity in the negotiations, other Member States in the past have assisted or taken over parts of the external representation. Since 2004 a more formalised system is in place in which the EU appoints "lead negotiators" and "issue leaders".³³ These are officials from Member States and the Commission who cover a specific issue for a longer term. Under the auspices of the Presidency they take care of most of the negotiations at the working level. There is, for instance, a lead negotiator for GHG mitigation and one for climate change adaptation. Each lead negotiator is supported by about three issue leaders, who serve as back up and help in developing positions and negotiating strategies. The appointment of lead negotiators and issue leaders is formally the responsibility of the Presidency to whom they report, but informally the relevant expert groups and the WPIEI are consulted on who should lead the EU on which issues. In the distribution of positions a balance is aimed for among the Member States and the Commission.³⁴

In line with their competence to negotiate internationally on environmental issues, as stipulated in the EC Treaty, Member States adopt their position by consensus. Article 174(4) provides the legal basis for EC activities in international environmental negotiations. It refers to Article 300 (EC Treaty), which briefly states that with regard to Community policies, it is the Commission that is authorised by the Council to negotiate international agreements with third countries. However, the last sentence of Article 174(4) stipulates, "the previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements". This has been used not only to refuse handing over authority to the Commission, as it requested in 1996,³⁵ but also to argue that consensus should be used for decision-making. Others have argued that the position could also be adopted by means of qualified majority voting, since this is also the rule

³² Costa 2008.

³³ Oberthür and Roche Kelly 2008; Birkel forthcoming.

³⁴ Oberthür 2009.

³⁵ Oberthür and Ott 1999, 66.

for adoption of European climate policies. Yet others argue that unanimity would be needed since climate policy affects the choice of energy sources and this has remained an area where the national veto applies (Article 175(2)(c) of the EC Treaty). For the adoption of GHG reduction or renewable energy policies, however, the Treaty article referring to the national veto over the energy mix has not been used.³⁶ In any event, the final version of an international climate agreement is signed and ratified by both the European Community and all the Member States. This, according to some, is also a reason why the climate change mandate should be supported by consensus. However, in trade negotiations conducted within the WTO, voting is used for the adoption of the EU's negotiating mandate and here, the final agreement also is signed by both the EC and the Member States.³⁷

All issues coming up in the climate negotiations have to be discussed in EU coordination, and any Member State can block progress. This limits the EU's ability to react swiftly in the negotiations. According to Denmark's Climate and Energy Minister Connie Hedegaard there have been several cases where the EU's reaction time has been too slow.³⁸

3.2 Preference congruency

Despite the consensus required, Member States have stood remarkably united. Apparently, they all have come to consider climate change a priority issue for the EU. There are a number of reasons for this.³⁹

First of all, European politicians, or at least a considerable number of them, appear to be truly concerned about the threats to humankind posed by climate change. They are firm believers of the scientific evidence presented by climate scientists gathered within the Intergovernmental Panel on Climate Change (IPCC). EU citizens also consistently rank climate change among the issues of high concern to them.⁴⁰ The attention given to Al Gore's movie "An inconvenient truth", the Stern report on the economic impacts of climate change, and the fourth assessment report of the IPCC, all contributed to a growing concern among European populations. Even those EU politicians who are not fully convinced have to admit that by following the precautionary principle, the EU has agreed to undertake action when, according to a scientific consensus, environmental damage is likely to occur.

Secondly, the Kyoto Protocol embodies almost everything the EU believes in, most importantly that it is possible to address a problem of the commons by means of inter-state cooperation. The EU's international climate agenda links with the EU's ambition for effective multilateralism and sustainable development.⁴¹ At the same time, backing the Kyoto Protocol so strongly proved an opportunity to demonstrate Europe's preference for a course different to the unilateral one advocated by the Bush

³⁶ For instance the emissions trading Directives 2003/87/EC and 2009/29/EC were adopted on the basis of article 175 (1), which implies adoption by qualified majority voting in the Council is possible. Renewable Energy Directive 2009/28/EC was adopted on the basis of article 175(1) and article 95. The latter also implies adoption by qualified majority voting in the Council.

³⁷ Kerremans 2004; Meunier and Nicolaïdis 2006.

³⁸ Hedegaard 2009.

³⁹ Van Schaik and Van Hecke 2008.

⁴⁰ Commission 2008a.

⁴¹ Cf. Commission 2003.

government of the US.⁴² Moreover, climate policy proved to be one of the few success stories of EU foreign policy. Together with the EU support for the International Criminal Court, support for the Kyoto Protocol demonstrates that the EU can act with a single voice in international affairs.⁴³ Thus, the opposition to the US made the EU realise the importance it attached to the Kyoto Protocol, and thereby indirectly enabled it to become an emblem of EU foreign policy.

Thirdly, climate change increasingly has been used as a vehicle to address energy security concerns. Reducing GHG emissions is intimately linked to reducing the use of fossil fuels. The EU is, and increasingly will be, an importer of fossil fuels. These fossil fuels, for the most part, come from countries with which the EU has an uneasy relationship. When Putin's Russia closed gas pipelines to neighbouring countries in 2006, many people feared Russia would increasingly use energy as a political weapon.⁴⁴ The EU's security of supply by then had already become a key issue. Rising oil prices fuelled the fear that the end of oil and gas reservoirs was near. As a consequence, while EU Member States have always been reluctant to hand over policy-making authority on the choice of energy sources, it makes absolute sense to them to reduce their dependency on imported fossil fuels by increasing energy efficiency and shifting to renewable energy. At the same time, these policy options can be presented to the public and other countries as climate policies.

Fourthly, climate change became a saviour issue for the EU itself. In 2005, the EU was in desperate need for an appealing issue to demonstrate its added value to European citizens. The European integration project had come under serious pressure, evidenced particularly by the negative votes on the European Constitution in two EU-founding states, France and the Netherlands. Politically, it became almost impossible to continue discussions on institutional reform. Instead, it was considered more appropriate to focus on concrete projects where "Brussels" could show its ability to solve pressing cross-border policy problems. Climate change clearly fitted the profile and became a priority policy item.

The above-mentioned reasons not only explain why the EU can act as an international leader on climate change, but also why it can put forward ambitious internal climate policies. It is important to realise that some of the factors are rather unique to the EU. Although climate change has gained in importance in other parts of the world, it is nowhere so politically important as in the EU.

The importance attached to international climate policy by the EU Member States and the European Commission has resulted in the EU's negotiating strategy stretching beyond the negotiations conducted within the context of the UNFCCC. Climate change has been included in a wide range of bilateral meetings and has featured on the agenda of many international organisations and bodies (e.g. World Bank, UN General Assembly, UN Security Council, UN Development Programme, G8, World Health Organization, etc). Climate change and (renewable) energy have become more important topics within the EU's development cooperation activities, European Neighbourhood Policy and bilateral agreements. Thereby, it seems that climate change has increasingly been included in the overall framework of EU external relations, where it is almost as important as trade and security relations. This is

⁴² Bretherton and Vogler 2006; Schreurs and Tiberghien 2007.

⁴³ Groenleer and van Schaik 2007.

⁴⁴ See the chapter by Douma et al. in this volume.

reinforced and stimulated by the Green Diplomacy Network that consists of diplomats working at the foreign ministries of Member States.⁴⁵

However, support for an ambitious climate policy and the continued world leadership of the EU on this issue should not be taken for granted. With more stringent GHG emission reduction targets and a growing realisation that new and additional financial resources will be needed to compensate developing countries, Member States seem to have already lost some of their enthusiasm. During the consideration of the climate and energy package at the end of 2008, the new EU Member States (led by Poland), Italy and, to a lesser extent, Germany were critical and demanded increased protection for targeted industry sectors.⁴⁶ Subsequently, reaching agreement on financial support for developing countries has proved difficult, making it less certain that the expectations raised at the Bali conference in 2007 can be met. Increased pressure can also be expected because, in order to achieve GHG emission reductions and mobilise financial resources, Environment Ministers increasingly have to rely on their colleagues for support. In previous years they have received relatively strong backing at the highest political level, but this may decline when other issues, such as the economic crisis, attract the attention of Presidents and Prime Ministers. The potential for clashes of interests with the EU's trade, development cooperation, agriculture, and foreign politics agendas has risen. In general the economic crisis is expected to put pressure on an ambitious internal and external climate policy.

Despite the overall unity in the climate negotiations, EU Member States also have had diverging national preferences. Consider for instance the treatment of nuclear energy, where France, as a producer of nuclear electricity, has a very different position than Germany, which has decided to phase out nuclear energy. Another issue has been the extent to which offset projects in third countries should be allowed to help reach the target. Internal division has proven problematic for the acceptance of the external representation. In 2000, the UK bypassed the French Presidency at the Hague conference, because it felt the need to build a bridge to the US position.⁴⁷ This was not appreciated by France and other Member States and resulted in negative media coverage for the EU. At New Delhi in 2002, the EU once more lacked negotiating flexibility because of internal division.⁴⁸ Hence, although overall EU unity has not been breached, differences of opinion on specific issues have certainly occurred. Since the EU has generally been the most ambitious in the negotiations, these differences thus far have not drawn a lot of attention. However, if negotiating partners were to come closer to the EU position, differences between EU Member States are likely to become more visible.

3.3 EU socialisation

The representatives of the EU Member States and the European Commission who deal with international climate negotiations spend many hours in EU coordination meetings during the international negotiations. They also meet about every other week in Brussels and at informal meetings, roundtable discussions, seminars and conferences. At the international negotiations, the EU coordination meetings take place on a daily basis lasting in total about two hours. Although EU coordination

⁴⁵ Oberthür 2009.

⁴⁶ Bulletin Quotidien Europe No. 9803, Saturday 13 December 2008.

⁴⁷ Grubb and Yamin 2001; Ott 2001.

⁴⁸ Vogler 2005.

takes a considerable amount of time, it generally helps the EU to firmly unite around an issue. The internal discussions also tend to strengthen the EU's argumentative capacity. Perhaps, most importantly, the EU coordination leads to a sense of "we-ness", a common European understanding on how to proceed in the negotiations. It thereby helps to understand why the EU nowadays is truly operating as a single block.

Whereas in the 1990s individual Member States at times took the floor and submitted their own proposals, undermining the single voice,⁴⁹ this has now become unacceptable. In informal contacts, Member States may still undermine the official EU efforts by disclosing internal EU divergences and EU tactics to negotiating partners, but in formal settings, breaking lines is "not done". Everywhere in the world, it is nowadays known that the EU is keen on promoting climate policy internationally and internal quarrelling would not help the EU's reputation in this regard.

Because climate change increasingly has become an emblem of EU foreign policy, EU foreign policy actors have also increasingly realised the need for the EU to sustain consensus on the issue of climate change. Their interest in the issue increased all the more because of a link to security highlighted *inter alia* in a study by former US generals.⁵⁰ In the EU, High Representative Solana and the Commission also presented a paper on the issue.⁵¹ This illustrates an increased interest, which could be interpreted as going beyond the relationship with security only. In 2008, Solana appointed a personal representative for energy security and climate change, Steven Everts. It seems EU foreign policy constituencies have realised the importance of climate change to the EU's image in the world.

This poses the question whether environmental experts need to be in the lead in order to keep the EU's ranks closed in international climate negotiations. On the one hand, the involvement of foreign policy actors contributes positively, because this makes it easier to link the climate agenda to other international agendas. On the other hand, it has increased tensions, since environment officials are not always convinced diplomats are sincerely concerned about climate change. These diplomats, moreover, pretend to be better skilled in international negotiations and claim credit for diplomatic successes, which the environment community has achieved. The environmental experts in the past operated as an epistemic community on the basis of a shared understanding of the problem and policy directions.⁵² This reinforced the process of socialisation, and hence unity. The involvement of diplomats may jeopardise this, although to date this seems not to have occurred.

The common opposition towards the US withdrawal from the Kyoto Protocol is an important factor that has united EU Member States and the Commission in the international climate negotiations.⁵³ As a result of the US withdrawal, the international climate change agenda became largely a European agenda. This may change under the Obama administration, which envisages a much more ambitious US climate policy. Paradoxically, while the EU warmly welcomes the US reengagement, it may result in making it more difficult to keep ranks closed internally. The EU position may need to become more detailed and nuanced. The absence of a "common

⁴⁹ Oberthür 2009.

⁵⁰ The CNA Corporation 2007.

⁵¹ Commission 2008b.

⁵² Haas 1992.

⁵³ Vogler 2006; Groenleer and Van Schaik 2007.

enemy” may moreover make it more difficult to sustain a united EU position and EU leadership.

A systemic factor that increases the sense of ownership of EU Member States in the international climate negotiations is the system of the rotating Presidency. Since all Member States take on this role at some point, they can more easily identify with it. Either they have been responsible for developing the EU position, or they will be in the future. Similarly, the system of lead negotiators and issues leaders enhances the sense of ownership. Because they take responsibility for the EU position, lead negotiators and issue leaders ought to be truly committed to it. The system thereby leads to a considerable degree of “Europeanisation” of Member State representatives.

3.4 Inherent shortcomings in the EU’s model for climate diplomacy

While the EU’s model for climate diplomacy has thus been relatively successful in recent years, a number of inherent shortcomings of the model have become apparent. Two dominant issues are, firstly, the need for consensus, which leads to time-consuming coordination and a relatively inflexible mandate, and, secondly, the risks for continuity and performance of the rotating Presidency, which leads and coordinates the EU in the negotiations, without being chosen on its merits.

The need for consensus means that EU unity in the climate negotiations can never be taken for granted.⁵⁴ With GHG emission reduction targets becoming steeper and the need to pay for adaptation and technology transfer to developing countries becoming more obvious, the support of new EU Member States, in particular, may diminish. The “old EU-15” may also find it difficult to put their money where their mouth is, particularly in times of economic crisis. The need to agree by consensus can moreover lead to inflexible positions should other states, such as the US, come closer to the EU position or become even more ambitious than the EU.

An intensifying coordination and differentiation of internal coordination structures have accompanied increased unity in external representation.⁵⁵ Preoccupied with internal coordination, little time and resources are left for outreach to, and negotiations with, the partners (or opponents) in the negotiations. The increased delegation of work to the expert level has, moreover, reinforced a compartmentalisation of EU external climate policy-making and has increased the risk of inconsistencies between different expert groups.

Perhaps most importantly, the effectiveness of the EU’s external representation is still highly dependent upon the effectiveness of the rotating Presidency. Although at lower levels lead negotiators from other Member States and the European Commission have been appointed to take care of the technicalities of the negotiations, the Presidency is formally responsible and its Environment Minister is the EU’s main spokesperson during high-level political negotiations. As a consequence, the EU’s performance is closely related to the negotiating capacity and skills of the Environment Minister of the country holding the rotating Presidency and his or her advisors. He/she acts as spokesperson, main contact point, main negotiator and representative of the EU in the international negotiations and is responsible for the EU’s internal management and

⁵⁴ Lacasta et al. 2007; Oberthür and Roche Kelly 2008.

⁵⁵ Oberthür 2009.

coordination.⁵⁶ Continuity and visibility of this leadership is hampered by the six-monthly change. Whilst the involvement of the incoming Presidency and Commission in the troika supports consistency, the lead negotiator changing every six months continuously endangers the efficacy of EU climate diplomacy.

4. Alternative models for EU climate diplomacy

It remains to be seen whether Member States will continue to see international climate policy primarily as an environmental issue or as a foreign policy issue. This may have considerable implications for the current model of consensus decision-making and external representation by the EU Presidency. In particular, should the Copenhagen conference be less of a success than anticipated by the EU, the current model may come under pressure. Below, two alternative models are described and analysed.

4.1 Commission take-over

After the adoption of the climate and energy package in December 2008 (and particularly the more centralised emissions trading system), climate policy has become more of a common European policy than ever before.⁵⁷ As a result, the European Commission may claim the issues discussed in the international climate negotiations fall largely within the EC's competence. In line with earlier rulings of the European Court of Justice on the parallelism of internal and external EC competence, this would imply the Commission might successfully claim authority over external representation.⁵⁸ This would likely also entail that a negotiating mandate would be proposed by the Commission and adopted in the Council by qualified majority voting.

The model would hence look very similar to the way the EU is currently conducting its trade negotiations. A team of Commission negotiators under a Commissioner responsible for climate change would take over the negotiations and report regularly to a committee of the Member States. This committee would look similar to the current EU coordination meetings, but its focus would change from defining the common EU position to disposing and controlling what the Commission is doing in the negotiations. As is the case in the WTO, it is likely that the EU Member States would still become individual signatories to climate treaties giving them a kind of ultimate veto over the end result of the negotiations, but during an often multi-annual negotiating endeavour, their influence would be less than it is today.

Advantages of the "Commission take-over" model are that it would greatly increase the consistency of the EU and reduce the current coordination challenge of having a team of lead negotiators employed in different EU Member States and the Commission. In theory it would moreover make it easier to decide upon the EU position in the negotiations, leading to more flexibility for the negotiator. It could be questioned, though, whether the Member States would trust the Commission to a sufficient degree and whether the Commission would start to have its own agenda in the negotiations. This may make it more difficult for the EU to agree upon a mandate. In the WTO negotiations, Member States in the Article 133 Committee have been described as "mothers-in-law", watching closely what the Commission is doing in the

⁵⁶ Oberthür 2009.

⁵⁷ See also the chapter by Pallemarts and Oberthür in this volume.

⁵⁸ Hoffmeister 2007.

negotiations.⁵⁹ The Commission is also accused of advocating too much of a liberal trade agenda in the negotiations, neglecting to look after other interests.⁶⁰ It could also diminish the degree of EU socialisation, which is clearly catalysed by the system of the rotating Presidency and the team spirit among the lead negotiator and issue leaders from the different Member States.

Birkel found through interviews, that Member State representatives involved in the climate negotiations would not prefer the Commission to take over the negotiations, since it would damage their sovereignty in international affairs.⁶¹ However, they are not opposed to the Commission's role as a strong partner in the troika and lead negotiator on specific issues.

4.2 EU High Representative and External Action Service take-over

An alternative option would be to hand authority on external representation over to the EU foreign policy coordinator foreseen in the Lisbon Treaty. Officially this function is named High Representative of the Union for Foreign and Security Policy, but this is somewhat misleading, as its tasks are much more encompassing than the current High Representative function. The High Representative would be Vice-President of the European Commission, which has led to the common use of the acronym HR/VP. The person will chair the Foreign Affairs Council and take care of its external representation. Within the Commission the HR/VP would be responsible for tasks incumbent on it in external relations and for coordinating other aspects of the Union's external action. The HR/VP would also be responsible for the consistency of EU external action and have at its disposal a so-called European External Action Service (EEAS) composed of the current staff of the HR, Commission civil servants working on external relations, and national diplomats.

The exact tasks, responsibilities and remit of the HR/VP and EEAS still have to be defined, and have already been subject to intense negotiations between the EU Member States. These negotiations were put on hold after Ireland rejected the Lisbon Treaty in a referendum in 2008, but informal considerations are ongoing on key questions, such as whether trade and development should be included in new foreign policy institutions.⁶² Responsibility for external representation in international organisations, including environmental ones, is also a sensitive question. The reasoning behind the establishment of a foreign policy coordinator was to put an end to the system of the rotating Presidency in external representation of the EU, but it is unclear if this also applies to issues not previously belonging to the remit of Foreign Ministers. Former Belgian Prime Minister Dehaene, in his capacity as a Member of the European Parliament, in March 2009, for example, presented a draft report in which he argues in favour of making the HR/VP responsible for the external representation of the EU in all international organisations.⁶³

The advantage of a take-over by the HR/VP and EEAS would, like in the Commission-take over model, be a more permanent structure for the coordination and

⁵⁹ Delreux and Kerremans 2008.

⁶⁰ Kerremans 2004.

⁶¹ Birkel (forthcoming).

⁶² Van Schaik 2008.

⁶³ Dehaene 2009. In this context, the extent to which the EU's position in the climate negotiations will be considered foreign policy becomes relevant. In this respect, it is interesting to note that climate change has been inserted into the Environment Chapter of the Lisbon Treaty.

external representation of the EU. It may also lead to the EU becoming a more diplomatic and strategic climate negotiator. On the negative side, the support by, and EU socialisation, of the Member States may diminish. In addition, the level of knowledge on the substance of the negotiations and the real commitment to tackling climate change may be less guaranteed than if Environment Ministers remain in the lead.⁶⁴

Lastly, if the Lisbon Treaty enters into force, the European Parliament may also become more involved. Its current advisory role would change to that of giving assent to any international agreement decided upon. A future climate agreement (e.g., a “Copenhagen Protocol”) would hence become subject to a possible veto by the Parliament. The European Parliament may use this veto position to demand a more prominent role in determining the EU’s negotiating position and in the EU’s external representation. However, it seems unlikely that the Parliament would vote down an international climate treaty, because it has always stressed the importance of obtaining such a treaty.

4.3 The influence of the Copenhagen Conference

If the Lisbon Treaty enters into force, it will be interesting to note who will represent the EU at (high-level) UN climate conferences. Although this will not affect the EU’s representation at the Copenhagen conference, the performance of the EU as a negotiator in Copenhagen is likely to have a great influence on how EU external representation will be organised afterwards. If the rotating Presidency system fails to function well, for instance when the EU is confronted with severe internal and/or external pressure, it is likely that either a Commission or HR/VP take-over will take place (or even a mixed model, e.g. a continuation of the lead-negotiators system in combination with coordination by the Commission or HR/VP). If the system functions well, it may be used to claim that external representation in the field of environmental policy should stay within the remit of the rotating Presidencies. It may even be claimed that the model used for the climate negotiations should be extended to other policy areas. Still, in this scenario, and in the scenario that the Lisbon Treaty does not enter into force, a chance exists that the Commission will bring a case before the European Court of Justice. When it comes to emissions trading, it seems as if a claim by the Commission could hardly be denied on the basis of judgements in earlier cases.⁶⁵

5. Conclusions

The current climate model has clear shortcomings, but has operated relatively well since the turn of the twenty-first century. The EU has stood at the forefront in the international fight against climate change and has managed to keep its ranks closed. In the future, EU unity may be threatened by more heterogeneous preferences of Member States, and a decreasing conviction of the need for a strongly united European position, resulting, *inter alia*, from the US comeback in the climate negotiations. Under such conditions, it could be argued that a more centralised system

⁶⁴ While at the time of writing, it is not certain that the Lisbon Treaty will enter into force, the option of the HR/VP taking over responsibility is hardly discussed among those currently involved in the negotiations, possibly because they are too busy with the preparatory negotiations for the Copenhagen conference.

⁶⁵ Eeckhout 2004; Hoffmeister 2007.

is needed in which the EU negotiating mandate can be agreed upon through voting and authority for external representation is attributed to a permanent negotiator.

The two alternative models that were discussed in this chapter – a take-over by the European Commission or by a EU foreign policy coordinator, as foreseen in the Lisbon Treaty – provide interesting options, but new shortcomings are likely to emerge. In terms of effectiveness, both models may strengthen the continuity of the EU in the negotiations, but it is not clear whether they will foster EU unity in external representation. If Member States are unwilling to cooperate because their preferences diverge or they do not see the need for a common European position, neither the European Commission nor the HR/VP is likely to improve the EU's performance in the international climate negotiations. The EU socialisation processes emerging from the rotating Presidency, combined with the lead negotiators and issue leaders from various EU Member States, are also likely to decline, if a more supranational model is used. This could threaten EU unity directly and indirectly, since it could jeopardise mutual understanding and, by extension, the homogeneity of preferences of the Member States.

Perhaps most surprisingly, the fact that climate change has become such a high profile issue has not drawn more attention to how EU climate diplomacy is organised. In discussions on the reform of EU foreign policy, there is hardly any mention of the rather specific model used in the climate negotiations, with a rotating Presidency supervising and coordinating a team of lead negotiators and issue leaders. At the same time, the EU Member States and the European Commission seem unaware of the possible effects following from creeping legal competences and the possible entry into force of the Lisbon Treaty.

The discussion on the most effective model for EU external representation is also relevant for other policy areas falling outside the scope of either the EU's Common Commercial Policy or the EU's Common Foreign and Security Policy (CFSP). Agreements reached in international organisations such as the WHO (health), FAO (agriculture), ICAO (aviation) and IMF (monetary policy), have tremendous impact on EU legislation. However, models used for EU coordination and external representation within these organisations are hardly scrutinised or compared systematically. Reform of the system of the rotating Presidency in external representation was at the root of institutional innovations proposed in the Lisbon Treaty, but it is still unclear how it will evolve outside the traditional areas of foreign policy. The Copenhagen conference is likely to become the litmus test for the EU's current model used in the climate negotiations. If it fails, it could be argued that the system of the rotating Presidency should also be reconsidered for the EU's external representation in other international organisations. Conversely, if the system, including the functioning of the lead negotiators and issue leaders, functions effectively, its use may also be considered in other settings.

Another, more researched question is the extent to which the EU operates like a state in international negotiations. In the climate negotiations we see that national representation persists, but whether the delegates of the EU Member States involved in the negotiations still consider themselves national delegates can be questioned. A clear identification with the EU as the primary affiliation seems to have emerged. "Team Europe" may be rather preoccupied with internal coordination, but to outsiders it clearly acts as one. The model of the rotating Presidency, lead negotiators and issue

leaders has made a large number of actors responsible for the development and delivery of the EU's position. In that respect the current model may be rather sustainable. It proves that understanding the EU in international affairs requires more than portraying it either as a state-like entity or a coalition of sovereign nation states.

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