

Part 1 - OVERALL REPORT



GR: EEN – GEM PHD SUMMER SCHOOL

SQUARING MULTILATERALISM & MULTIPOLARITY

Multilateralizing the emerging Multipolar World:
Trends & Challenges

AUGUST 20-24th 2012

FUDAN UNIVERSITY, SHANGHAI (PRC)



This activity acknowledges the support of the FP7 large-scale integrated research project **GR: EEN - Global Re-ordering: Evolution through European Networks** European Commission Project Number: 266809 and the **Erasmus Mundus Joint Doctorate GEM- Globalisation, the EU, and Multilateralism** Project Number 2010-0010

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FORMAT

The GREEN-GEM PhD Summer School is an **annual week-long event** designed to meet the needs of up to 25 internationally selected PhD students. It is divided into **a series of half day thematic sessions**. Each session includes both lectures by participating high-profile academics on their on-going research; as well as, paper presentations by selected doctoral students rooted in their own research agendas.

The GREEN-GEM PhD Summer School offers attending doctoral students **a unique opportunity to gather valuable feedback on their research** as presented papers are discussed by all attending researchers and specifically commented on by at least two previously designated discussants, amongst which one academic and one fellow doctoral student.

The GREEN-GEM PhD Summer School also provides paper-givers with the **opportunity to publish their contribution as a GEM-GREEN working paper**, an online series widely publicized through the GREEN website.

The GREEN-GEM PhD Summer School thus continues the tradition of excellence build up by the GARNET PhD School, by taking over its format geared towards **gathering promising doctoral researchers from across a variety of disciplines and epistemic communities**.

The GREEN-GEM PhD Summer School also provides a list of practical, organizational and financial provisions aimed at facilitating interaction amongst the highly cosmopolitan community in attendance. Amongst other, participants must: *be fluent in both in spoken and written English to ensure a shared working language; attend all sessions and auxiliary events to encourage interaction; and provide all scheduled materials beforehand with an eye on allowing for ample preparation*. Furthermore, the programme foresees a **Mobility Fund** it can use to provide a limited number of selected students with financial support towards the Travel & Housing Costs incurred.

RULES

All selected and participating PhD Students did:

- **Offer Written Comments on a specific Fellow PhD Student's Presented Paper**
Participants were thus given the name of one of the paper-giving students for whom they were to fulfil the role of “**Doctoral Discussant**”. To this effect, all student papers were made available 5-days prior to the Summer School. Discussants prepared a set of written comments which they presented during a 10-min time slot following the discussed student’s own presentation
- **Prepare a short presentation of one of the attending Academics**
Each participant was expected to compile a standard Poster summarily presenting a given Academic in question. Furthermore, in most cases, on the basis of their background check, tudents were asked to introduce the attending Academics before they gave their scheduled lecture.
- **Prepare a short presentation of one of the attending PhD Student**
Besides the presentation of an attending Academic, participants were also expected to prepare a standard Poster summarily presenting the given PhD student whose paper they are expected to comment on.
- **Actively Participate**
Selected students had to attend all scheduled sessions, and actively contribute during the various exchanges, discussion tables and Q&As.
To encourage active student participation a set of “Prizes” were awarded at the end of the Summer School based on a peer-review exercises aim at identifying the top three participating students.

All attending PhD Students selected as Paper-Givers were held to:

- **Submit a first full draft of the Paper they were scheduled to discuss**
- **Present their Paper**
To the full Attendance of the Summer School during a 30min presentation
- **Engage with the Comments on their Presentation offered by**
 - A participating Academic (10min)
 - A fellow attending PhD students (10min)
 - An open-round table (10min)

RESOURCES

Summer School Web Platform

A dedicated [web platform](#) was set up with an eye on guaranteeing: easy information flow; minimal printing; and optimal interaction between the participants before, during and after the Summer School. (See www.greenfp7.eu/summerschool)

The Summer School's webpage allowed both Academics and PhD Students users to: access up-to-date information; download a host of documents; and interact with the other participants. The different elements made available to the Summer School's Community, were included:

- **History**
A quick overview of the decade long expertise upon which the summer school can rely when hosting an event
- **Rules & Principles**
General Format and Type of Contributions typifying the Summer School
- **2012 Program**
Detailed Schedule and list of contribution by Academics
- **Useful Documents**
Templates of Reference Documents
- **Forum**
A protected and Shared Space where to interact with other Summer School Participants
- **Useful Links**
References and Links to Partners' Institutions

Draft Papers & Presentations *(Available Online)*

Upon reception, all papers, documents and presentations were posted online. Registered participants could access these documents through the Summer School's online Program (See www.greenfp7.eu/summerschool/programme/).

Scheduled Contributions included:

- **Students Papers**
- **Short Presentation** of attending Academics & Students
- **Written Comments** by 'Doctoral Discussant'
- **Power Point Presentations**

Paper Lay Out

With an eye on facilitating subsequent publication in the GREEN-GEM Working Papers Series, paper-givers were requested to edit and format their submission in line with the series broad principles.

Further information on the GREEN-GEM Working Papers Series can be found on its dedicated webpage. Concretely, submitted papers were to:

- ✓ Meet all requirements of a scientific publication (*research question & demonstration*)
- ✓ Be a qualitative research paper (*incl. references and a bibliography*)
- ✓ Be in Publishable English (*No English language proofreading is foreseen*)
- ✓ Preferably using the Harvard Referencing System
- ✓ Count between 7000 and 10.000 Words
- ✓ Be formatted in accordance with the series layout (*Template provided on website*)
- ✓ Fully reference the authors institutional affiliation and the GREEN/GEM support

GREEN-GEM Working Papers Series

The GREEN-GEM Doctoral Working Papers Series publishes research product from Erasmus Mundus GEM scholars or any other doctoral candidate involved in GEM or GREEN sponsored activities.

Either academic communities will be involved in the review process of the submitted scientific product; the GEM PhD School's Central executive Office in Brussels will be charged with the initial follow up, whereas GR:EEEN's Project Management Office in Warwick will take on the finalization and initial publication of the approved product.

The GREEN-GEM PhD Working Papers series is above all an electronic online format. Accordingly, all published papers are first and foremost posted on either of the associated programme's webpages – on pages specifically devoted to the Doctoral Working Papers Series in question on both:

[GR:EEEN Public Website](#) & [GEM Public Website](#)

Academics' Posters

Through the Summer School's online platform, the programme provides the students with a template of the Presentation Posters they were held to make. At the start of each session about 10min was set aside to allow for these introductions to be orally presented by their author before the relevant Academic's lecture.

Suggested information included:

- ✓ Name & Surname
- ✓ Function and Affiliation
- ✓ A Photo
- ✓ Log(s) of Affiliate Institution(s)
- ✓ Research Areas (& Theoretical Outlook)
- ✓ Relevant Publication(s)
- ✓ Award(s) & Title(s)
- ✓ Key Words (Describing Individual)
- ✓ Interesting Fact(s) (of your choice)
- ✓ An Illustrative Quote of your Choice

The poster template includes the following sections and content:

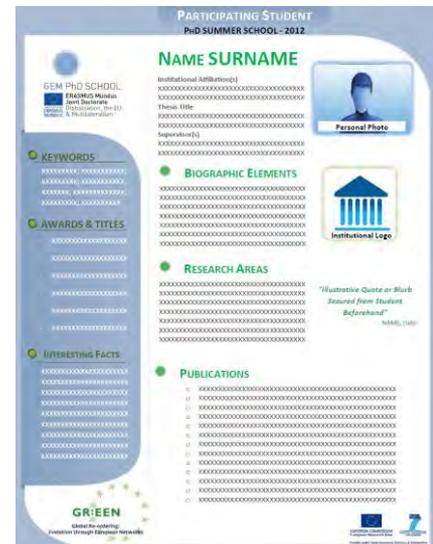
- Header:** PARTICIPATING ACADEMIC, PhD SUMMER SCHOOL - 2012
- Left Column:** GEM PhD SCHOOL logo, ERASMUS MUNDUS logo, KEYWORDS, AWARDS & TITLES, INTERESTING FACTS.
- Right Column:** NAME SURNAME, FUNCTION & AFFILIATION, PERSONAL PHOTO, BIOGRAPHIC ELEMENTS, INSTITUTIONAL LOGO, RESEARCH AREAS, MAJOR PUBLICATIONS, NOTEWORTHY QUOTE DRAWN FROM PAST PUBLICATIONS OR PRONOUNCEMENTS.
- Bottom:** GREEN logo, ERASMUS MUNDUS logo, and other institutional logos.

Student's Posters

Through the Summer School's online platform, organizers provided the students with a template of the Presentation Posters they were held to make. This is done to guide the students in their necessary efforts one of their Fellow PhD students.

Suggested information included:

- ✓ Name & Surname
- ✓ Institutional Affiliation
- ✓ Thesis Title
- ✓ Supervisor(s)
- ✓ A Photo
- ✓ Log(s) of Affiliate Institution(s)
- ✓ Research Areas (& Theoretical Outlook)
- ✓ Relevant Publication(s)
- ✓ Award(s) & Title(s)
- ✓ Key Words (Describing Individual)
- ✓ Interesting Fact(s) (of your choice)
- ✓ An Illustrative Quote or Blurb you may have gotten from the Student in question



PARTICIPANTS

ATTENDING

- **Pr. TELÓ Mario**
Vice-President Institut d'Etudes Européennes, Université Libre de Bruxelles (Belgium) – *Senior Central Coordinator and President of the EM GEM PhD School Board of Directors, GR:EEN FP7 Research Project's Senior Scholar*
@: mtelo@ulb.ac.be
- **Pr. CHEN Zhemin**
Chair Department of International Politics, School of International Relations and Public Affairs, Fudan University
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- **Pr. SONG Guoyou**
Associated professor at Center for American Studies, Fudan University
@: guoyousong@fudan.edu.cn
- **Pr. DAI Bingran**
President for Chinese Society for European Union Studies, Fudan University
@: brdai@fudan.edu.cn
- **Pr. PAN Zhongqi**
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- **Pr. Sebastian BERSICK**
School of International Relations and Public Affairs, Fudan University
@: bersick@dgap.org
- **Pr. Nicolaas SCHRIJVER**
Chair of Public International Law, Grotius Center for International Legal Studies, Faculty of Law, Leiden University (The Netherlands)
@: n.j.schrijver@law.leidenuniv.nl

ACADEMICS

- **Pr. Klaus SEGBERS**
Chair of Political Science at the Institute for East European Studies, professor for International Relations at the Otto-Suhr-Institute for Political Science (OSI), Freie Universität Berlin (Germany)
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- **Pr. Jean Frederic MORIN**
Member of the GEM PhD School Board of Directors, Institut d'Etudes Européennes, Université Libre de Bruxelles (Belgium) – ULB Member of the EM GEM PhD School Board of Directors.
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- **Pr. René SCHWOK**
Chair "European Union: Policy and Institutions", Institut Européen, Université de Genève (Switzerland)
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- **Pr. Raffaele MARCHETTI**
Assistant Professor in international Relations, Department of Political Sciences and School of Government, Faculty of Political Sciences, LUISS-Guido Carli Rome (Italy)
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- **Pr. Richard YOUNGS**
Associate Professor of International and European Politics, Department of Politics and International Studies, University of Warwick (United Kingdom)
@: ryoungs@fride.org
- **Frederik PONJAERT**
Research Fellow at the Université Libre de Bruxelles and the Katholieke Universiteit Leuven. Junior Scientific Coordinator of the GEM PhD School
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- **Juliana Gonzales Jauregui** (FLACSO)
@: gjjuli@yahoo.com.ar
- **Basje Bender** (Universiteit van Amsterdam)
@: B.A.M.Bender@uva.nl
- **June Park** (Boston University)
@: junepark@gmail.com
- **Matthew Maguire** (Boston University)
@: mwmaguire@gmail.com
- **Paul Van Hooft** (Universiteit van Amsterdam)
@: p.a.vanhooft@uva.nl



Attending PhD Students from the
host country selected
by Fudan University

- **Anna Chung** (ULB & LUISS – GEM PhD School)
@: anna.chung@erasmusmundus-gem.eu
- **Zhong Zhun** (LUISS & ULB – GEM PhD School)
@: zhong.zhun@erasmusmundus-gem.eu
- **Hikaru Yoshizawa** (ULB & UNIGE – GEM PhD School)
@: hikaru.yoshizawa@erasmusmundus-gem.eu
- **Chenchen Zhang** (LUISS & ULB – GEM PhD School)
@: chenchen.zhang@erasmusmundus-gem.eu



Attending PhD Students Selected
within the GR:EEN Consortium

- **Liu Hongxia** (Tongji University)
@: yunxia925@163.com
- **Silvia Menegazzi** (LUISS-Guido Carli)
@: smenegazzi@luiss.it
- **Yang Haifeng** (Fudan University)
@: 11110170017@fudan.edu.cn
- **Coraline Goron** (CUPL)
@: coraline.goron@gmail.com
- **Do Thuy Ti** (Australian National University)
@: thuy.t.do@anu.edu.au



Attending PhD Students from the
EMJD-GEM PhD School

Further Participants

Through a partnership with

Freie Universität



Berlin

The GEM-GR:EEN Summer School on “Squaring Multilateralism & Multipolarity - Multilateralizing the Emerging Multipolar World: Trends & Challenges” is simultaneously hosted by Fudan University as the Fudan – Freie Universität Berlin Summer School on “Global Challenges - Regional Strategies: Policymaking in Diverse Settings”.

Accordingly, opportunities for crosspollination were sought out and as a result: Tuesday August 21st Sessions and ancillary activities are jointly organized.

As both PhD Communities interact, further opportunities for interaction amongst a wider pool of participants - both in terms of Academics and Students – are expected to crystalize.

OVERALL STUDENT

ROLE ATTRIBUTION

	Doctoral Discussant for...	Compile a Student Poster on...	Compile Academic Poster for...
Anna Chung	Matthew Maguire	Matthew Maguire	René Schwok
Chenchen Zhang	Do Thuy Ti	Do Thuy Ti	/
Zhong Zhun	/	Liu Hongxia	Dai Bingran
Hikaru Yoshizawa	Basje Bender	Basje Bender	Richard Young
Basje Bender	Coraline Goron	Coraline Goron	Nicolas Schrijver
Paul Van Hooft	Jun Park	Jun Park	Song Guoyou
Matthew Maguire	Hikaru Yoshisawa	Hikaru Yoshizawa	Zhonqi Pan
Jun Park	Anna Chung	Anna Chung	Jean-Frédéric Morin
Juliana González Jáuregui	Silvia Menegazzi	Silvia Menegazzi	Rafaele Marchetti
Thuy Thi Do	Zhong Zhun	Zhong Zhun	Mario Telò
Silvia Menegazzi	Paul Van Hooft	Paul Van Hooft	Sebastian Bersick
Coraline Goron	Yang Haifeng	Yang Haifeng	Chen Zhemin
Yang Haifeng	Liu Hongxia	/	Sebastiano Maffettone
Liu Hongxia	Juliana González Jáuregui	Juliana González Jáuregui	Klaus Segbers

PRESENTATIONS

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ACADEMIC LECTURES

BY ACADEMICS

Attending academics were held to provide an hour-long Lecture on a previously agreed upon relevant Methodological or Theoretical challenges facing doctoral students. At the 2012 Shanghai edition of the Summer School, contributions included:

- **A Joint Academic Panel presenting contrasting Academic Views of the Evolving Power Shifts and their implications for the global Multilateralism:**
 - [Foreign Policy & External Relations after the Lisbon Treaty: An Unprecedented Kind of Power?](#) by Pr. Mario Telò (ULB-IEE)
 - [Why There Won't Be a New International Order](#) by Pr. Klaus Segbers (FUB)
 - [A New World Order with Some Chinese Characteristics](#) by Pr. Chen Zhemin (Fudan U.)
- **An overview of prevailing Chinese research perspectives in International Studies:**
 - [The Polarity Debate: A Theoretical Perspective](#) by Pr. Zhonqi Pan (Fudan U.)
 - [New Trends in Globalisation & their Implications for the International Economy](#) by Pr. Song Guoyou (Fudan U.)
 - [China's Growth Strategy following the Global Crisis](#) by Prof. Dai Bingran (Fudan U.)
- **Lectures highlighting novel approaches to International Relations rooted in Discursive, sociological or network-based approaches.**
 - [Transnational Communities & Socialization in the Global Intellectual Property Regime](#) by Prof. Jean-Frédéric Morin (ULB-IEE)
 - [The New Quest for Legitimacy: the Politics of Norm Change in between Multilateralism and Multipolarism](#) by Prof. Rafaele Marchetti (LUISS – Guido Carli)
- **Lectures encouraging comparison and bridging exercises with the knowledge and insights garnered in the fields associated with EU studies and International Law**
 - [The Global Responsibility to Protect: paradigm shift or old wine in new bottles?](#) by Pr. Nicolaas Schrijver (Leiden U.)
 - [The Peculiarity of the EU's External Relations](#) by Prof. René Schwok (UNIGE)
 - [How the Eurozone Crisis Affects the EU's Place in the World](#) by Prof. Richard Young (University of Warwick)
 - [The EU as a Laboratory for Regional Integration](#) by Frederik Ponjaert (ULB-IEE)

Paper-givers were held to contribute a scientific paper on the agreed upon topic. At the 2012 Shanghai edition of the Summer School, contributions included

- **Juliana GONZALES JAUREGUI**
(FLACSO)
China: the Force Reshaping Latin America
- **Yang HAI FENG**
(Fudan University)
Processes and Interactions of China and the EU in Facing Global and Regional Crisis
- **Basje BENDER**
(Universiteit van Amsterdam)
The International Competition Network: Towards Convergence, Informed Divergence or Learning from Difference?
- **Coraline GORON**
(CUPL)
Multilevel Institutional Interplay of EU East Asia Cooperation in the Field of Energy - Climate Governance
- **June PARK**
(Boston University)
Echoes of the Asian Financial Crisis in Reverse: Capital Controls and Currency Wars in the Wake of the Post-Global Financial Crisis - Perspectives from EMEs
- **Do THUY THI**
(Australian National University)
Norm Diffusion, Normative Change and the Future of East Asian Regionalism
- **Paul VAN HOOFT**
(Universiteit van Amsterdam)
Multipolarity, Strategic Competition and Multilateralism
- **Anna CHUNG**
(ULB & LUISS – GEM PhD School)
Regional Cooperation and the Web of Joint Initiatives in North East Asia
- **Liu HONGXIA**
(Tongji University)
Functionnal Evolution of Visegard Group Cooperation
- **ZHONG Zhun**
(LUISS & ULB – GEM PhD School)
Multiple Principles for Multilateral Intervention
- **Silvia MENEGAZZI**
(LUISS-Guido Carli)
Between Multipolarity and Multilateralism: a Chinese Perspective
- **Hikaru YOSHIZAWA**
(ULB & UNIGE – GEM PhD School)
Multilateral Cooperation on the Competition Issue in the Emerging Multipolar World: the Soft Policy Convergence Approach on Intermediary?

WORKING PAPERS

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1. YOSHIZAWA Hikaru, How does ICN accommodate its Increasing Diversity? Putting Benchmarking into Practice., (November 2012)
2. Coraline GORON, The EU Aviation ETS caught between Kyoto and Chicago: Unilateral Legal Entrepreneurship in the Multilateral Governance System, (November 2013)
3. VAN HOOFT Paul, Multipolarity, Multilateralism and Strategic Competition, (December 2012)
4. ZHONG Zhun, Multiple Principle for Multilateral Interventions: The Ideational Divergences between EU and China, (December 2012)
5. Sylvia MENEGAZZI
6. Anna CHUNG
7. June PARK

Part 2 – PROGRAMME OVERVIEW

GR: EEN – GEM PHD SUMMER SCHOOL

SQUARING MULTILATERALISM & MULTIPOLARITY

*Multilateralizing the emerging Multipolar World:
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Monday 20th of August 2012 - Structural Considerations: Which Multilateralism for which Multipolarity
Chairs: Pr. Chen Zhimin (Fudan University) & Pr. Mario Telò (ULB-IEE)

Morning Sessions

08:30 – 08:50 Registration

08:50 – 09:10 Introduction by Coraline Goron (CUPL) & Do Thuy Thi (Australian National University)

09:00 – 09:30 Opening Remarks by Prof. Mario Telò (ULB-IEE) & Prof. Chen Zhimin (Fudan University)

09:30 – 09:40 Session Introduction by Matthew Maguire (Boston University)

09:40 – 10:20 Academic Lecture by Prof. Pan Zhongqi (Fudan University)

The Polarity Debate: A Theoretical Perspective

10:20 – 10:40 Q&A Session

10:40 – 10:50 Coffee Break

10:50 – 11:40 Doctoral Presentation by Juliana Gonzales Jauregui (FLACSO)

China: the Force Reshaping Latin America

11:20 – 11:30 Academic Discussant by Prof. Pan Zhongqi (Fudan University)

11:30 – 11:40 Doctoral Discussant by Liu Hongxia (Tongji University)

11:40 – 11:50 Q&A Session

11:50 – 12:00 Coffee Break

12:00 – 12:50 Doctoral Presentation by Anna Chung (ULB & LUISS – GEM PhD School)

Regional Cooperation & the Web of Joint Initiatives in North East Asia

12:30 – 12:40 Academic Discussant by Prof. Chen Zhimin (Fudan University)

12:40 – 12:50 Doctoral Discussant by Jun Park (Boston University)

12:50 – 13:00 Q&A Session

13:00 - 14:00 Lunch

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Afternoon Sessions

14:00 – 14:10 **Session Introduction** by **Basje Bender** (Universiteit van Amsterdam)

14:10 – 14:50 **Academic Lecture** by **Prof. Nicolaas Schrijver** (Leiden University)

The Global Responsibility to Protect: paradigm shift or old wine in new bottles?

14:50 – 15:10 **Q&A Session**

15:10 – 15:20 **Coffee Break**

15:20 – 16:10 **Doctoral Presentation** by **Zhong Zhun** (LUISS & ULB – GEM PhD School)

Multiple Principles for Multilateral Intervention

15:50 – 16:00 **Academic Discussant** by **Prof. Nicolaas Schrijver** (Leiden University)

16:00 – 16:10 **Doctoral Discussant** by **Do Thuy Ti** (Australian National University)

16:10 – 16:20 **Q&A Session**

16:20 – 16:30 **Coffee Break**

16:30 – 17:10 **Doctoral Presentation** by **Liu Hongxia** (Tongji University)

Functionnal Evolution of Visegard Group Cooperation

17:00 – 17:10 **Academic Discussant** by **Prof. Mario Telò** (ULB-IEE)

17:10 – 17:20 **Doctoral Discussant** by **Yang Haifeng** (Fudan University)

17:20 – 17:30 **Q&A Session**

17:30 – 17:50 **Session Conclusion** by **Prof. Mario Telò** (ULB-IEE) & **Prof. Chen Zhemin** (Fudan University)

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Tuesday 21st of August 2012 – World in Transition: Searching for a New Order

Chair: Pr. Pan Zhongqi (Fudan University)



Joint Sessions with GPSP

Morning Session

09:20 – 09:30 Opening Remarks by Prof. Pan Zhongqi

09:30 – 11:30 Joint Academic Panel

Foreign Policy and External Relations after the Lisbon Treaty: An Unprecedented Kind of Power?

By Prof. Mario Telò (ULB-IEE)

Why There Won't Be a New International Order

By Prof. Klaus Segbers (Freie Universität Berlin)

A New World Order with Some Chinese Characteristics

By Prof. Chen Zhimin (Fudan University)

11:30 – 12:00 Q&A Session

12:00 – 14:00 Lunch

Afternoon Sessions

14:00 – 14:10 Session Introduction by Zhong Zhun (LUISS & ULB – GEM PhD School)

14:10 – 14:50 Academic Lecture by Prof. Dai Bingran (Fudan University)

The Debt Crisis and its Implications: A Chinese Perspective

14:50 – 15:10 Q&A Session

15:10 – 15:20 Coffee Break

15:20 – 16:10 Doctoral Presentation by Silvia Menegazzi (LUISS-Guido Carli)

Between Multipolarity and Multilateralism: a Chinese Perspective

15:50 – 16:00 **Academic Discussant** by Prof. Dai Bingran (Fudan University)

16:00 – 16:10 **Doctoral Discussant** by Juliana Gonzales Jauregui (FLASCO)

16:10 – 16:20 Q&A Session

16:20 – 16:30 Session Conclusion by Prof. Pan Zhongqi (Fudan University)

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Scheduled Group Social Activity

18:30 – 21:00

Joint Boat-Trip on Huangpu River

Common Activity with GPSSC and GPSP

Freie Universität  Berlin

Joint Excursion with GPSSC/GPSP



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Wednesday 22nd of August 2012 – Drivers & Obstacles to International Social, Economic & Financial Governance
Chair: Pr. Sebastiano Maffettone (LUISS – Guido Carli)

Morning Sessions

09:30 – 09:40 Session Introduction by Hikaru Yoshizawa (ULB-IEE & UNIGE – GEM PhD School)

09:40 – 10:20 Academic Lecture by Prof. Richard Young (University of Warwick)

How the Eurozone Crisis Affects the EU's Place in the World

10:20 – 10:40 Q&A Session

10:40 – 10:50 Coffee Break

10:50 – 11:20 Doctoral Presentation by Paul Van Hooft (Universiteit van Amsterdam)

Multipolarity, Strategic Competition and Multilateralism

11:20 – 11:30 *Academic Discussant* by Prof. Richard Young (University of Warwick)

11:30 – 11:40 *Doctoral Discussant* by Silvia Menegazzi (LUISS – Guido Carli)

11:40 – 11:50 Q&A Session

11:50 – 12:00 Coffee Break

12:00 – 12:10 Doctoral Presentation by Basje Bdender (Universiteit van Amsterdam)

The International Competition Network:

Towards Convergence, Informed Divergence or Learning from Difference?

12:30 – 12:40 *Academic Discussant* by Prof. Jean-Frédéric Morin (ULB-IEE)

12:40 – 12:50 *Doctoral Discussant* by Hikaru Yoshizawa (ULB-IEE & UNIGE - GEM PhD School)

12:50 – 13:00 Joint Q&A Session

13:00 – 14:00 Lunch

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Afternoon Sessions

14:00 – 14:10 **Session Introduction** by **Paul Van Hoof**t (Universiteit van Amsterdam)

14:10 – 14:50 **Academic Lecture** by **Prof. Song Guoyou** (Fudan University)

New Trends in Globalisation and their Implications for the International Economy

14:50 – 15:10 **Q&A Session**

15:10 – 15:20 **Coffee Break**

15:20 – 16:10 **Doctoral Presentation** by **June Park** (Boston University)

**Echoes of the Asian Financial Crisis in Reverse: Capital Controls and Currency Wars
in the Wake of the Post-Global Financial Crisis - Perspectives from EMEs**

15:50 – 16:00 **Academic Discussant** by **Prof. Song Guoyou** (Fudan University)

16:00 – 16:10 **Doctoral Discussant** by **Paul Van Hoof**t (Universiteit van Amsterdam)

16:10 – 16:20 **Q&A Session**

16:20 – 16:30 **Concluding Remarks** by **Prof. Sebastiano Maffettone** (LUISS – Guido Carli)

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Thursday 23rd of August 2012 – New Actors in a Changing Global System

Chair: Prof. Song Guoyou (Fudan University)

Morning Sessions

09:30 – 09:40 Session Introduction by Anna Chung (ULB-IEE & LUISS – GEM PhD School)

09:40 – 10:20 Academic Lecture by Prof. René Schwock (UNIGE)

The Peculiarity of the EU's External Relations

10:20 – 10:40 Q&A Session

10:40 – 10:50 Coffee Break

10:50 – 11:40 Doctoral Presentation by Yang Haifeng (Fudan University)

Processes and Interactions of China and the EU in Facing Global and Regional Crisis

11:20 – 11:30 Academic Discussant by Prof. René Schwock (UNIGE)

11:30 – 11:40 Doctoral Discussant by Coraline Goron (CUPSL)

11:40 – 11:50 Q&A Session

11:50 – 13:00 Lunch

GR: EEN – GEM PHD SUMMER SCHOOL

SQUARING MULTILATERALISM & MULTIPOLARITY

*Multilateralizing the emerging Multipolar World:
Trends & Challenges*

AUGUST 20-24th 2012
FUDAN UNIVERSITY, SHANGHAI (PRC)



Afternoon Sessions

13:00 – 13:10 **Session Introduction** by **Silvia Menegazzi** (LUISS – Guido Carli)

13:10 – 13:50 **Academic Lecture** by **Prof. Sebastian Bersick** (Fudan University)

Asia in the Eyes of Europe: The EU's Perception of Asian Multilateralism

13:50 – 14:10 **Q&A Session**

14:10 – 14:20 **Coffee Break**

14:20 – 15:50 **Doctoral Presentation** by **Coraline Goron** (CUPSL)

**Multilevel Institutional Interplay of EU East Asia Cooperation
in the Field of Energy - Climate Governance**

14:50 – 15:00 **Academic Discussant** by **Prof. Sebastian Bersick** (Fudan University)

15:00 – 15:10 **Doctoral Discussant** by **Basje Bender** (Universteit van Amsterdam)

15:10 – 15:20 **Q&A Session**

15:20 – 15:30 **Coffee Break**

15:30 – 14:40 **Session Introduction** by **June Park** (Boston University)

14:40 – 16:20 **Academic Lecture** by **Prof. Jean-Frédéric Morin** (ULB-IEE)

Transnational Communities and Socialization in the Global Intellectual Property Regime

16:20 – 16:40 **Q&A Session**

16:40 – 16:50 **Coffee Break**

16:50 – 17:40 **Doctoral Presentation** by **Matthew Maguire** (Boston University)

**Governing Corporate Non-Financial Disclosure:
The Role of European Private Regulators**

17:20 – 17:30 **Academic Discussant** by **Prof. Jean-Frédéric Morin** (ULB-IEE)

17:30 – 17:40 **Doctoral Discussant** by **Anna Chung** (ULB-IEE & LUISS – GEM PHD School)

17:40 – 17:50 **Joint Q&A Session**

17:50 – 18:00 **Concluding Remarks** by **Prof. Song Guoyou** (Fudan University)

GR: EEN – GEM PhD SUMMER SCHOOL

SQUARING MULTILATERALISM & MULTIPOLARITY

*Multilateralizing the emerging Multipolar World:
Trends & Challenges*

AUGUST 20-24th 2012
FUDAN UNIVERSITY, SHANGHAI (PRC)



Friday 24th of August 2012 – Global and Regional Norms in the light of accelerating Multipolar Tendencies
Chair: Prof. René Schwöck (UNIGE)

Morning Sessions

09:30 – 09:40 **Session Introduction** by Yang Haifeng (Tongji University)

09:40 – 10:20 **Academic Lecture** by Frederik Ponjaert (ULB-IEE)

The European experience as a Laboratory for Regional Cooperation

10:20 – 10:40 **Q&A Session**

10:40 – 10:50 **Coffee Break**

10:50 – 11:40 **Doctoral Presentation** by Do Thuy Thi (Australian National University)

Norm Diffusion, Normative Change and the Future of East Asian Regionalism

11:20 – 11:30 **Academic Discussant** by Prof. Sebastiano Maffettone (LUISS – Guido Carli)

11:30 – 11:40 **Doctoral Discussant** by Chenchen Zhang (LUISS & ULB-IEE – GEM PhD School)

11:40 – 11:50 **Q&A Session**

11:50 – 13:00 **Lunch**

GR: EEN – GEM PhD SUMMER SCHOOL

SQUARING MULTILATERALISM & MULTIPOLARITY

*Multilateralizing the emerging Multipolar World:
Trends & Challenges*

AUGUST 20-24th 2012
FUDAN UNIVERSITY, SHANGHAI (PRC)



Afternoon Sessions

13:00 – 13:10 **Session Introduction** by Juliana Gonzales Jauregui (FLACSO)

13:10 – 13:50 **Academic Lecture** by Prof. Raffaele Marchetti (LUISS – Guido Carli)

**The New Quest for Legitimacy: the Politics of Norm Change in-between
Multilateralism and Multipolarism**

13:50 – 14:10 **Q&A Session**

14:10 – 14:20 **Coffee Break**

14:20 – 15:50 **Doctoral Presentation** by Hikaru Yoshizawa (ULB-IEE & UNIGE – GEM PhD School)

**Multilateral Cooperation on the Competition Issue in the Emerging Multipolar World:
The Soft Policy Convergence Approach on Intermediary?**

14:50 – 15:00 **Academic Discussant** by Prof. Raffaele Marchetti (LUISS – Guido Carli)

15:00 – 15:10 **Doctoral Discussant** by Matthew Maguire (Boston University)

15:10 – 15:20 **Q&A Session**

15:20 – 15:40 **Coffee Break**

15:40 – 16:00 **Overall Concluding Remarks**

by Prof. Chen Zhimin (Fudan University)

& Frederik Ponjaert (ULB-IEE & KULeuven – GEM PhD School CeO)

Part 4 – ACADEMIC & STUDENT POSTERS

GEM PhD SCHOOL



ERASMUS Mundus
Joint Doctorate
Globalisation, the EU
& Multilateralism

KEYWORDS

A leading figure in the
European Studies

AWARDS & TITLES

- Jean Monet Chair
Professor
- 2000, Chinese State
Council's Special Award
- 2008, Jean Monet Prize

INTERESTING FACTS

10 years service for a PLA
military institute as a cadet
and teaching assistant

9 years worker in a Radio
factory in Shanghai

Once a trainee in the
Commission of European
Communities in 1980s

GR:REEN

Global Re-ordering:
Evolution through European Networks

PR. BINGRAN DAI

FUNCTION & AFFILIATION

Vice President of Chinese Association of European
Studies
Honourable Director of Centre for European Studies
Deputy Director of Centre for Nordic Studies
Deputy Director of Institute of World Economy
In Fudan University



BIOGRAPHIC ELEMENTS

Faculty in Fudan University since 1978;

Jean Monet fellow in European University Institute;
Researcher scholar in London School of Economics;

Guest and Part-time professor in Renmin University,
Nankai University, Science Po Lille;

Member of the Academic Committee, EU-China High Education
Cooperation Program

RESEARCH AREAS

European Integration
World Economics
European Financial Market



*"In this globalized world,
Europe and China share their
destiny and have to work more
closely"*

EU and Global Economic Governance:
A Chinese Perspective, 2012

MAJOR PUBLICATIONS

- 2009, *The Enlarged European Union: Prospects and Implications*, ed with Jian Junbo, Nomos
- 2008, "Understanding Lisbon Treaty", *Chinese Journal of European Studies*, No. 2
- 2007, "European Studies in China", in David Shambaugh (ed.): *China-Europe Relations*, Routledge
- 2006, "The Tottering EU Economy: Problems and Causes", *World Economic Studies*, No.2
- 2005, "Towards a Mature, Healthy and Stable China-EU Partnership", *Chinese Journal of European Studies*, No. 2
- 2003, "EU's Role in the Post Cold War Period and the Future of Asia-Europe Relations", *Asia-Pacific Journal of EU Studies*, No.1, Vol.1



EUROPEAN COMMISSION
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GEM PhD SCHOOL



**ERASMUS Mundus
Joint Doctorate**
Globalisation, the EU
& Multilateralism

KEYWORDS

Philosopher

AWARDS & TITLES

- Member of the EM GEM PhD School Board of Directors.
- Specialized in Social Philosophy at the London School of Economics and among other appointments, has been a visiting professor at Harvard, Tufts and New York University.
- Member of many scientific committees supported by Adriano Olivetti, Einaudi and Ernst & Young foundations.
- First President of the Italian Society of Political Philosophy.
- Director of *Filosofia e Questioni Pubbliche*, a semi-annual review of political, moral and social philosophy and applied ethics.

SEBASTIANO MAFFETTONE

Professor of Political Philosophy,
Dean of the Faculty of Political Science,
Director of the Centre for Ethics and Global Politics at Luiss Guido Carli
University (LUISS) in Rome

BIOGRAPHIC ELEMENTS

Born on April 14, 1948 in Naples;
Later 1960s, Post-degree specialization in Oxford and then in LSE (master thesis on "Habermas and Rawls");
Between the 1970s and 1990s, public intellectual and journalist;
1982-1984, taught in Faculty of Political Science in Turin;
1985-1998, Professor of Political Philosophy in Palermo;
1998- Now, Professor of Political Philosophy in LUISS



 **LUISS** Guido Carli
LIBERA UNIVERSITÀ INTERNAZIONALE DEGLI STUDI SOCIALI

RESEARCH AREAS

Professor Maffettone's research concerns the development of an original vision of public ethics within the context of Italy and international themes of contemporary political philosophy. He also takes interest in the philosophy of John Rawls and has produced an Italian translation of *A Theory of Justice*.

MAJOR PUBLICATIONS

Professor MAFFETTONE is the author of more than 16 books, and editor of several collective volumes.

His most recent works in English include:

2012: (with Aakash Singh Rathore) *Global Justice: Critical Perspectives*, Routledge India.
2010: *Rawls: An Introduction*, Polity Press.

GR:EEEN

Global Re-ordering:
Evolution through European Networks



EUROPEAN COMMISSION
European Research Area



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KEYWORDS

International finance; U.S. economy; U.S.-China relations; East Asia; regional agreements; trade relations

AWARDS & TITLES

- Fox Fellow at Yale University (2005-2006)
- Visiting scholar at Georgetown University (2009 – 2010)

INTERESTING FACTS

Guoyou Song writes commentaries and opinion pieces on trade and international finance for Jiefang Daily, Global Times, the Oriental Morning Post and International Herald Tribune.

GUOYOU SONG

Associate Professor at the Center for American Studies, Fudan University



BIOGRAPHIC ELEMENTS

Guoyou Song received both his Ph.D and Master degree in international relations in 2006 and 2003 respectively from Fudan University, and a BA in economy from Zhejiang University of Industry and Commerce.

Center for American Studies
Fudan University

RESEARCH AREAS

Guoyou Song's research focuses on Chinese-American relations, specifically those relating to trade; the U.S. economy, and international finance.

MAJOR PUBLICATIONS

Books (monograph and translation)

- Balancing Social Interest and State Security: Government's Strategic Choice on Trade Policy
- A Short History of Political Philosophy written by Gaetano Mosca, translated by Song Guoyou et al., Shanghai People's Publishing House

Papers (most recent)

- "The U.S. and East Asia Financial Integration", in Fudan American Review, Vol. II, 2009
- "China's Purchase of American Treasury Securities : Source , Profit and Impact", Fudan Journal, No.4, 2008
- "the American Factor in China's Participation in International Financial System", International Forum, Jul., 2008
- "Japan's Strategy towards East Asia Regional Order", International Forum, No.6, 2007
- "China's Economic Influence on DPRK", Korean Studies, No.16, Dec 2007
- "The Establishment of America's Trade Policy for China", The Chinese Journal of International Politics, No.4, 2007

GR:REEN

Global Re-ordering:
 Evolution through European Networks



KEYWORDS

Multilateralism, Europe-Asia relations, international cooperation, global governance

RESEARCH AREAS

Eu-Asia relations, security and Asian affairs, US-Asia relations, Chinese foreign and domestic politics, political transformation processes in Asia, regional cooperation in Asia (ASEAN, EAS, APEC)

INTERESTING FACTS

-Commentator in national and international media (the Economist, International Herald Tribune, Financial Time Deutschland, Deutsche Welle World

-Asia-Europe Lecture tour (2006)

SEBASTIAN BERSICK

FUNCTION & AFFILIATION

-Lecturer Department of Government, University College Cork;
 -Lectureship at the School of International Relations and Public Affairs, Fudan University
 -Associate Fellow at the German Council on Foreign Relations (DIGAP)



BIOGRAPHIC ELEMENTS

- April 2007 to June 2009: Associate in the Research Division Asia at the German Institute for International and Security Affairs (SWP), Berlin
- 2004-2007: Senior Research Fellow at the European Institute for Asian Studies (EIAS), Brussels. As expert, Political Analyst served, inter alia, the Europe China Academic Network (ECAN)
- 1989-2004: Senior Research Associate at the Division of China and East Asian Politics, Free University, Berlin.

MAJOR PUBLICATIONS

- "Asia in the eyes of Europe: images of a rising giant ", (edited by), Sebastian Bersick, Micheal Brutor, Natalia Chaban, Sol Iglesias, Ronan Lenihan, Nomos Publisher, (1 September 2012)
- "Multiregionalism and multilateralism: Asian-European relations in a global context", By Paul van der Velde, Sebastian Bersick and Wim Stockhof, Amsterdam University Press, 2007
- "Europe in Asia", in Shambaugh, David/Yahuda Michael (Eds.), International Relations in Asia: The new regional system, Latham: Md.: Rowman & Littlefield, 2008, pp.104-123
- "The impact of European and Chinese Soft Power on Regional and Global Governance", in Kerr, David/Liu, Fei (eds.), "The international Politics of EU-China relations", British Academy, London, 2007, pp.216-230
- "The democratization of inter and trans-regional dialogues: the role of civil society, NGOs and parliament", in Ruland, Jurgen et al. (eds.), Asia-Europe relations. Building blocks for global governance?, Routledge, Oxon, 2008, pp.244-269

GR:REEN

Global Re-ordering:
Evolution through European Networks



KEYWORDS

European integration and foreign Policy; Chinese Diplomacy; EU-China relations

AWARDS & TITLES

Jean Monnet Chair Professor of European Foreign Policy

Associate Dean, Institute of International Studies, Fudan University)

Chevalier dans L'Ordre des Palmes Academiques ,France, 2006.

First prize award, Shanghai academic books

INTERESTING FACTS

Prof. Dr. Chen Zhimin has accumulated impressive teaching experience in China as well as abroad, including regular lectures in several European Countries, in the United States and in Japan. Since 2002 he has been sitting on the editorial committee of *The Pacific Review*, (Routledge)

ZHIMIN CHEN

Doctor in International Politics,
Jean Monnet Chair Professor,
Associate Dean, Institute of International Studies,
Department of International Politics
School of International Relations and Public Affairs
Fudan University, Shanghai, P.R China



BIOGRAPHIC ELEMENTS

Prof. Dr. Chen Zhimin was born in July 1966 in China. He is married with one child. He pursued his whole academic career at Fudan University, from which he graduated with a Master's in Western European Studies in 1990, before doing his PhD in International Politics there (PhD Degree obtained in 1998) His excellent English and balanced, reasoned and sharp views on Chinese and European and western politics, as well as China-EU relations have made him a courted scholar on the old continent.



RESEARCH AREAS

- Chinese Diplomacy and Foreign policy
- European Union's Foreign Policy
- International Negotiations
- Globalization and global governance
- Regional Integration

"We haven't seen real EU-China Cooperation in a strategic sense. The so-called Strategic Partnership is a rhetoric one, not a substantive one"

Chen Zhimin, BICCS, 8 March 2010

MAJOR PUBLICATIONS

- First Author, *Contemporary Diplomacy*(Beijing: Beijing University Press, 2008), with Xiao and Zhao (*in Chinese*)
- First editor, *International Political Economy and China's Globalization*, (Shanghai: Shanghai Sanlian Publishing House, 2006), with David Zweig (*in Chinese*)
- First author, *Foreign Policy Integration In European Union: A mission impossible?* (Beijing: Shishi Publishing House, in December 2003), with Gustaaf Geeraerts (*in Chinese*)
- Sole Author, *Subnational Governments and Foreign Affairs*, (Beijing: Zhongguo Changzheng Chubanshe, 2001) (*in Chinese*)
- Co-editor, *China's Reforms and International Political Economy*(London: Routledge, April, 2007), with David Zweig. ISBN-10: 0415396131 (*in English*)
- "International Responsibility and China's Foreign Policy", in Masafumi Iida(ed.), *China's Shift: Global Strategy of the Rising Power* (Tokyo: The National Institute for Defense Studies, 2009), pp.1-28 (*in English*)

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Evolution through European Networks



KEYWORDS

International Relations /
Global Affairs
International Political
Theory

AWARDS & TITLES

- L. S. Finkelstein Award on International Organization, ISA, 2005.
- International Competition, Finalist Essay - Irmgard Coninx Foundation and Wissenschaftszentrum Berlin für Sozialforschung, 2005.
- International Bastiat Contest – Second Prize, IES, 2001.
- School of Liberalism Contest – First Prize, Fondazione Einaudi, 1999.

INTERESTING FACTS

- LUISS Post-doc Fellowship, sponsored by LUISS University (2008-2011).
- Jean Monnet Fellowship, sponsored by European Commission (2005-2006).
- Italian National Research Council Junior research Grant (2003-2004).

RAFFAELE MARCHETTI

Assistant Professor in International Relations
Department of Political Sciences and School
of Government, Faculty of Political Sciences
LUISS-Guido Carli, Rome (Italy)

BIOGRAPHIC ELEMENTS

Scientific coordinator of FP6 Strep project *SHUR. Human Rights in Conflicts: the Role of Civil Society* funded by the EC; Fellow at the European University Institute, the Italian National Research Council-CNR and in the Network of Excellent *GARNET*. Research contractor for the FP6 research project *DEMOS (Democracy in Europe and the Mobilization of Society)*, the European Union Institute for Security Studies-EUISS, and the Istituto San Pio V. Professor at LSE, American University of Rome, John Cabot University and University of Naples L'Orientale. He all did research at University of Exeter, University of Nottingham and University of Urbino. In 2005, he received the *Lawrence S. Finkelstein Award* by the International Studies Association-ISA, Section on International Organization.

RESEARCH AREAS

International Relations – Positive research: Global Politics, Civil Society, European and Italian Foreign Policy and International Scenarios and Political Risk Analysis

International Political Theory – Normative research: Global Democracy, Cosmopolitanism and Migratory Justice

MAJOR PUBLICATIONS

“Contemporary Political Agency: Theory and Practice” (co-ed., Routledge, forth, 2012), “Global Democracy: Normative and Empirical Perspectives” (co-ed., Cambridge University Press, 2011), “Civil Society, Ethnic Conflicts, and the Politicization of Human Rights” (co-ed., United Nations University Press, 2011), “Conflict Society and Peacebuilding” (co-ed., Routledge, 2011), “Manuale di politica internazionale (co-au., UBE, 2010), “European Union and Global Democracy”(co-ed., CPI, 2009) and “Global Democracy: For and Against. Ethical Theory, Institutional Design, and Social Struggles” (au., Routledge, 2008, Italian trans. Vita e Pensiero, 2010). His articles appeared, among other journals, in *Constellations*, *Ethics and International Affairs*, *Global Society*, *Indiana Journal of Global Legal Studies*, *International Studies Review*, and *Review of International Studies*. He is currently completing a book on “The Other Side of Global Politics: Goals, Strategies, and Impact of Civil Society Mobilizations” and working on a long-term project on “Legitimation Strategies: The Competition for World Order”.



*“Civil society organizations
give voice to those who are
voiceless”*

Marchetti, 2010

(Panel on Civil society’s role in
global governance, EUISS Annual
Conference)

GR:REEN

Global Re-ordering:
Evolution through European Networks



KEYWORDS

International Relations
Theory, International
Political Economy,
International Politics of
Intellectual Property

AWARDS & TITLES

- Member of REPI
(Recherche et enseignement
en politique internationale)
- Board member
(GEM PhD School)
- Researcher
(GR;EEN FP7)
- Board member
(The Innovation Partnership)

INTERESTING FACTS

Jean-Fred has already taught at
four universities in three countries.

JEAN-FRÉDÉRIC MORIN

FUNCTIONS Affiliation(s)

Professor of political science, Université Libre de Bruxelles



BIOGRAPHIC ELEMENTS

Jean-Frédéric Morin is a professor in political science at the Université Libre de Bruxelles where he teaches international political economy, foreign policy analysis and international environmental politics



. He has an interdisciplinary background in international relations, including a dual Ph.D in political science and law. Prior to joining ULB, he was a project leader at the Centre for Intellectual Property Policy at McGill University and taught intellectual property law, international trade law

“It is time we directly explore multi-causality and endogeneity rather than controlling for them. Complexity is what makes all social sciences so fascinating.”

Jean-Frédéric MORIN,

August 2012

RESEARCH AREAS

Jean-Frédéric MORIN is an emerging interdisciplinary specialist in law and political science. His research interests include the IP community, legal transplant, the EU as discursive actor, and regime complexity. He has published books and articles on topics ranging from patents to investment policy to international trade. He is especially interested in how global institutions contribute to the success or failure of innovation. His work has been cited by the World Health Organization.

PUBLICATIONS

In the last three years, Jean-Frédéric MORIN has published on various topics, including international patent law making, biodiversity governance and international investment policy.

“The Life-Cycle of Transnational Issues: Lessons from the Access to Medicines Controversy”, *Global Society*, vol. 25(2), 2011
(with Richard Gold and Kevin Daley) “Having Faith in IP: Empirical Evidence of IP Conversion”, *WIPO Journal* vol. 3(2), 2011.
“The Two-Level Game of Transnational Network”, *International Interactions*, vol. 36(4), 2010.
(with Richard Gold) “Consensus-Seeking, Distrust, and Rhetorical Action”, *European Journal of International Relations*, vol. 16(4), 2010.
“Multilateralising TRIPs-Plus Agreements: Is the US Strategy a Failure?’, *Journal of World Intellectual Property*, vol. 12(3), 2009....
...and many more articles and conference papers.





KEYWORDS

International relations theory; China and the international system; China-US and China-EU relations.

AWARDS & TITLES

- Visiting Scholar, Lund University, 2006.
- Research Fellow, Shanghai Institute for International Studies, 2000-2005.
- Visiting Scholar, Fairbank Center at Harvard University, 2004.
- Visiting Scholar, Henry Stimson Center, 2001.
- Visiting Scholar, University of Tokyo, 1999-2000.

ZHONGQI PAN

Professor, School of International Relations and Public Affairs, Fudan University



BIOGRAPHIC ELEMENTS

Dr. Zhongqi Pan is currently professor at the School of International Relations and Public Affairs, Fudan University, where he received his Ph.D. in international relations in 1999. He teaches international politics at both undergraduate and graduate levels and in both Chinese and English. He was seconded by China's Foreign Ministry as a First Secretary at Mission of the People's Republic of China to the European Communities in 2008-2009.



RESEARCH AREAS

His research focus of interest includes international relations theory, China and the international system, China-US and China-EU relations, etc.

MAJOR PUBLICATIONS

- o *World Order: Structure, Mechanisms, and Models*. 2004. Shanghai: Shanghai Publishing House.
- o *China's International Responsibility and Strategy* (ed.). 2008. Shanghai: Shanghai People's Publishing House.
- o *Multilateral Governance and International Order* (ed.). 2006. Shanghai: Shanghai People's Publishing House.
- o (with Zhimin Chen) "China in Its Neighborhood: A 'Middle Kingdom' Not Necessarily at the Centre of Power." 2011. *The International Spectator* 46(4): 79-96.
- o "Managing the Conceptual Gap on Sovereignty in China-EU Relations." 2010. *Asia Europe Journal* 8(2): 227-243.
- o "Sino-Japanese Dispute over the Diaoyu/Senkaku Islands: The Pending Controversy from the Chinese Perspective." 2007. *Journal of Chinese Political Science* 12(1): 71-92.
- o "US Taiwan Policy of Strategic Ambiguity: A Dilemma of Deterrence." 2003. *Journal of Contemporary China* 12(35): 387-407.

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Global Re-ordering:
Evolution through European Networks

GEM PhD SCHOOL
ERASMUS Mundus
Joint Doctorate
Globalisation, the EU
& Multilateralism

KEYWORDS

Public International Law;
United Nations; Peace and
Security; Human Rights;
Sustainable Development.

AWARDS & TITLES

- Professor of Public International Law (Leiden University).
- Member of the Royal Netherlands Academy of Arts and Sciences.
- Award by the UN Academic Council for best recent book on UN issues (2012).

INTERESTING FACTS

Prof. Schrijver is a member of the Dutch Senate for the Labour Party (PvdA). He was a member of the Dutch inquiry Committee on the Dutch participation in the Iraq war. He also serves as member and vice-chair of the UN Committee on Economic, Social and Cultural Rights.

PROF. DR. NICO SCHRIJVER

Chair of Public International Law, Grotius Center for International Legal Studies, Faculty of Law, Leiden University (The Netherlands).



BIOGRAPHIC ELEMENTS

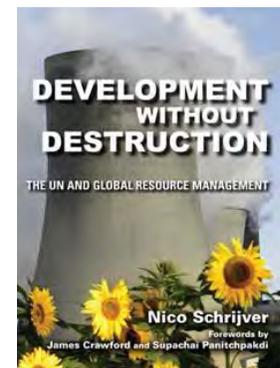
Prof. Schrijver appeared before various international courts and tribunals, such as the International Court of Justice. He has working experience within the UN New York and is a visiting professor at the ULB (Brussels) and the Chinese Academy of Social Sciences (Beijing). Prof. Schrijver began his career at the University of Groningen, where he studied law and also obtained his PhD.



Universiteit Leiden

RESEARCH AREAS

Prof. Schrijver specializes in Public International Law and has a particular interest in the United Nations, peace and security, human rights and sustainable development.



MAJOR PUBLICATIONS

- * *Development Without Destruction. The United Nations and Global Resource Management.* (UN Intellectual History Project). Bloomington, USA: UN Intellectual History Project/Indiana University Press (2010).
- * *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status.* In Chinese. Beijing: Social Sciences Academic Press (2010).
- * The EU's common development cooperation policy. In Telò, M. (Ed.) *The European Union and Global Governance* (pp. 176-191). Oxford: Routledge (2009).
- * *Sovereignty over Natural Resources: Balancing Rights and Duties.* Cambridge: Cambridge University Press (2008).
- * *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status.* Leiden: Martinus Nijhoff Publishers (2008)
- * Natural resource management and sustainable development. In: Weiss, T.G. & Daws, S. (Eds.), *The Oxford Handbook of the United Nations*, pp. 592-610. Oxford: Oxford University Press (2007).
- * Schrijver, N.J. & Bossche, P., van den & Faber, G.: *Unilateral Measures Addressing Non-Trade Concerns: A Study on WTO Consistency, Relevance of other International Agreements, Economic Effectiveness and Impact on Developing Countries of Measures concerning Non-Product-Related Processes and Production Methods.* Den Haag: OBT (2007).
- * *The United Nations of the Future. Globalisation with a Human Face.* Amsterdam: KIT Publishers (2006).

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Global Re-ordering:
Evolution through European Networks



EUROPEAN COMMISSION
European Research Area



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KEYWORDS

AWARDS & TITLES

- Holder Jean Monnet Chair

INTERESTING FACTS

RENÉ SCHWOK

FUNCTION & AFFILIATION

Associate Professor of Political Science; Holder of the Jean Monnet Chair in Political Science; Programme Director, Master of Advanced Studies in European and International Security Studies



BIOGRAPHIC ELEMENTS

René was born in Geneva and is Swiss. He received his PhD from the Graduate Institute of International Studies. He has been a consultant for various Swiss and European agencies and governments, comments frequently on European issues for the media and speaks regularly at conferences.



**UNIVERSITÉ
DE GENÈVE**

RESEARCH AREAS

The European Union

Theories of International Relations

External relations of Switzerland

The foreign policy of Nazi Germany.

*“Illustrative Quote or Blurb
Secured from Student
Beforehand”*

NAME, Date

MAJOR PUBLICATIONS (Selected Books Only)

- o La politique extérieure de la Suisse après la Guerre froide, 2012
- o European Union - Switzerland : Impossible Membership ?, 2009
- o L'Union européenne et la sécurité internationale. Théories et pratiques, 2009
- o Théories de l'intégration européenne, Approches, concepts et débats, 2005
- o US-EC Relations in the post-Cold War Era, 1993
- o Interprétations de la politique étrangère de Hitler, 1990

More information about René Schwok and his publications, see:

<http://unige.academia.edu/RenéSCHWOK/>.

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Global Re-ordering:
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GEM PhD SCHOOL



ERASMUS Mundus
Joint Doctorate
Globalisation, the EU
& Multilateralism

KEYWORDS

- A Famous professor
- Wide range of interests
- Remarkable achievements

AWARDS & TITLES

- 11.-12.2007 Adjunct Professor
SIPA and Harriman Institute,
Columbia University, New York
- 01.-02.2004;01.-02.2008
Visiting Researcher, CREES,
Stanford University
- 11.2003 Visiting Researcher,
Elliott School, George
Washington University,
Washington, D.C.
- Since 2001 Membership
International Studies
Association (ISA)
- 01-02.2000 Visiting Researcher
at CISAC, Stanford University
- Professor/Doctor

KLAUS SEGBERS

FUNCTION & AFFILIATION

- * Chair of Political Science at the Institute
for East European Studies
- * Professor for international Relations at the
Otto-Suhr-Institute for Political Science
(OSI)
- * Freie Universität Berlin (Germany)



BIOGRAPHIC ELEMENTS

education

- | | | |
|------|----------------------|---------------------|
| 1992 | Habilitation | Bremen University |
| 1984 | Dr. Phil | Bremen University |
| 1979 | MA/State examination | Konstanz University |

Professional Experience

- | | |
|------------|--|
| Since 1996 | Prof. for Politics and East European Affairs, FU Berlin |
| 1995-1996 | Prof. for International Relations (Substitute), Konstanz
University |
| 1990-1995 | Researcher, Head of Department at SWP |

RESEARCH AREAS

- Global Politics/ IR, Cities in Global Politics, Transformations in
Comparison

PUBLICATIONS

- Segbers, K. / Amen, M. / Toly, N. / McCarney, P. (eds.) (2010): Cities
and Global Governance: New Sites for International Relations.
Aldershot: Ashgate (forthcoming).
- Segbers, K. (2009): Global Politics and the Collapse of the the
Political West Divide: The Emerging New Global Landscape. In: 20
Years After the Fall of the Berlin Wall. Singapore: KAS, p. 61-73.

GR:GREEN

Global Re-ordering:
Evolution through European Networks



KEYWORDS

European Union Studies;
Comparative Regionalism;
Institutionalism;
Multilateralism; GEM

AWARDS & TITLES

- GEM PhD School Central Senior Scientific Coordinator
- Director of Research of the EUNRAGG/GEM Research Unit at the IEE-ULB
- Professor at the Faculty of Political Sciences and at the IEE-ULB
- Member of the Académie Royale de Belgique

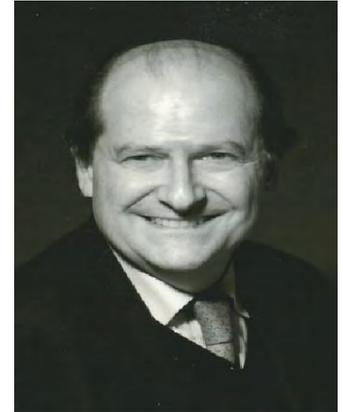
INTERESTING FACTS

- Member of the Directors Board and Scientific Board for academic journals such as the "Journal of European integration"(Essex University, Colchester UK) and the "European Union Politics" etc.
- Advisor for the Belgian Parliament, the European Parliament, the European Commission and the European Council Presidency

MARIO TELO

FUNCTION & AFFILIATION

Vice-President, Institut d'Etudes Européennes, Université Libre de Bruxelles (Belgium) – *Senior Central Coordinator and President of the EM GEM PhD School Board of Directors, GR:EEN FP7 Research Project's Senior Scholar*



BIOGRAPHIC ELEMENTS

Master in Political Science at Florence University
PhD in Political Science (La Sapienza – Roma)

RESEARCH AREAS

INTERNATIONAL RELATIONS THEORY

New Institutionalism, Multilateralism, New Regionalism, Institution Building and Reform...

EU STUDIES

Europe in the World, External Impact of Domestic Evolutions, European socio-Economic Modernization Policy...

COMPARATIVE REGIONALISM

Comparative Politics, Euro-Asian & Euro-Latin American Interregionalism, ...

MAJOR PUBLICATIONS

- Towards a New Europe? (ed), Edition de l'ULB, Brussels, 1992
- EU and the Challenge of Enlargement,(ed) Editions de l'ULB, Brussels, 1993
- Between Nation and Europe (ed), in French ,Brussels 1993
- EU as a Social Union? (ed), Editions de l'ULB, Brussels, 1994
- Democracy and European Construction (ed), Editions de l'ULB, Brussels, 1995
- From Maastricht to Amsterdam. Treaty Reform in EU, (ed. in collaborationn with P. Magnette), in French, Complexe, Brussels, 1996
- European Union and New Regionalism,(ed) in English, Ashgate, Aldershot, 2001
- Europe: a civilian power? Macmillan: Palgrave (forthcoming)
- State, Globalisation and Multilateralism; The Challenges of Institutionalizing Regionalism, Series: United Nations University Series on Regionalism - Vol.5, Forthcoming 2012



"GEM represents a big step forward from EU centred studies to global studies where comparative research is absolutely crucial"

MARIO TELO

GR:EEEN

Global Re-ordering:
Evolution through European Networks

DR. RICHARD YOUNGS

GEM PhD SCHOOL



ERASMUS Mundus
Joint Doctorate
Globalisation, the EU
& Multilateralism

KEYWORDS

European foreign and security policy; democracy promotion; democratized multilateralism; Middle East

INTERESTING FACTS

Interesting career at both universities and think tanks

Some of his books are purely academic, while others are more accessible and target not only academic circles but also practitioners and the general public

Associate Professor of International and European Politics, University of Warwick

Director of FRIDE (Madrid-based think tank)



BIOGRAPHIC ELEMENTS

- Analyst at the Foreign and Commonwealth Office
- Research fellow to an EU project on democracy promotion
- EU Marie Curie Fellow, based at the Norwegian Institute for International Relations, Oslo
- BA (Hons) at Cambridge University
- MA and PhD from Warwick University

THE UNIVERSITY OF
WARWICK

RESEARCH AREAS

- European foreign and security policy
- Western policies towards the wider Middle East
- Political reform in the Middle East
- The international dimensions of democratization

“As the world faces the biggest geopolitical upheaval for two centuries, Richard Youngs makes a compelling case for the EU to climb out from beneath the duvet and shape its own destiny in the new world order”

F. Stephens, Financial Times, pronouncements to Europe's Decline and Fall (2010)

MAJOR PUBLICATIONS

- *Europe's Decline and Fall: The Struggle Against Global Irrelevance*, London: Profile Books, 2010.
- *Europe's Role in World Politics: A Retreat from Liberal Internationalism*, London: Routledge, 2010.
- *Energy Security: Europe's New Foreign Policy Challenge*, London: Routledge, 2009.
- *Europe And The Middle East: In The Shadow of September 11*, Boulder: Lynne Rienner Publishers, 2006.
- *International Democracy and the West: The Role of Governments, NGOs and Multinationals*, Oxford: Oxford University Press, 2004.
- *The European Union and the Promotion of Democracy: Europe's Mediterranean and East Asian Policies*, Oxford: Oxford University Press, 2002.

and numerous articles in first-rate academic journals

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EUROPEAN COMMISSION
European Research Area



Funded under Socio-economic Sciences & Humanities



KEYWORDS

EU competition policy; regulation; global political economy; international relations.

AWARDS & TITLES

- MSc European Governance, University of Bristol, 2012.
- MA Global Political Economy, Waseda University, 2010.
- BA Political Science, Waseda University, 2008.

HIKARU YOSHIZAWA

Institutional Affiliation(s)

GEM PhD School, based at IEE-ULB (Belgium)
 University of Geneva (Switzerland)

Thesis Title

Internal and External Constraints on the Strategic Use of EU Competition Policy in the Globalized Economy

Supervisor(s)

Professor Janine Goetschy (ULB and CNRS), Professor René Schwok



BIOGRAPHIC ELEMENTS

First-year PhD candidate at ULB, Brussels. Hikaru plans to spend his second year at the University of Geneva.

RESEARCH AREAS

EU competition policy. More specifically, (i) its supranational institutional setting, (ii) dynamic relations between national and European competition regulation, (iii) global implications of European competition regulation with special reference to impartiality regarding nationality, and (iv) bilateral and multilateral cooperation and the EU in this policy are.

Apart from the PhD project: the relationship between ever growing consumer involvement and the legitimacy of EU competition policy.

PUBLICATIONS

- "The EU: A Legitimate and Efficient Institutionalized Global Actor in the Making? Institutional Analysis: EU's External Action, Institutions & Governance After the 'Reform Treaty'," GR:EEN Workshop, ULB, Brussels, April 2012.
- "Facing New Avenues of Japan-EU Cooperation in a Changing Context: Economic Integration, Disaster Prevention and Relief Cooperation," Conference Paper, 14th Japan-EU Conference, University Foundation, Brussels, November 2011.
- "The European Union as an International Actor in Competition Policy: The Extraterritorial Use of Merger Regulation and Political Conflicts," MA Thesis, Waseda University, March 2010.
- "The Failure of the ITO Plan and the GATT: The Process of Post-war International Trade Regime Creation," BA Thesis, Waseda University, March 2008.

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 Evolution through European Networks

GEM PhD SCHOOL


 ERASMUS Mundus
 Joint Doctorate
 Globalisation, the EU
 & Multilateralism

KEYWORDS

EU competition law and policy; EU external relations; experimental governance

AWARDS & TITLES

Sep – Dec 2008

Scholarship Royal Dutch Institute Rome, Italy for master thesis (Western Literature and Culture - Italian)

INTERESTING FACTS

Excellent knowledge in modern Italian architecture

Fluent in Dutch (mother tongue), English, Italian and French

BASJE BENDER

Institutional Affiliation(s)

PhD candidate at the Department of Political Science, University of Amsterdam; GR:EEN member

Thesis Title

The external dimension of EU competition policy

Supervisor(s)

Prof. Johathan Zeitlin



 UNIVERSITY OF AMSTERDAM

BIOGRAPHIC ELEMENTS

Education

Diploma from Université de Provence Aix-Marseille I (Langue et Civilisation Française); Master of Arts (Western Literature and Culture - Italian), Master of Laws (European Law), Bachelor of Arts (Italian Language and Culture), Bachelor of Laws from University of Utrecht

Work Experience

Intern at **the European Commission**, Directorate-General Competition; **Paralegal at Boekel de Nerée**; **the Dutch Embassy in Rome**; **Clifford Chance LLP**

RESEARCH AREAS

The external dimension of EU competition policy with special attention to a conceptual tool, 'experimentalist approach'. Her research examines why and how the EU exports and extends its own competition law model with its norms and processes at bilateral, regional and multilateral levels.

PUBLICATIONS

- 'The External Dimension of EU Competition Policy' (2012), presentation at GR:EEN postdoc workshop, Univ. of Amsterdam
- Presentation on EU foreign policy (2012) at Summer School 'Europa Quo Vadis?', Royal Dutch Institute, Rome.
- 'Roma EUR: Completing a Fascist Building Project in Postwar Italy' (2010), presentation at European Architectural History Network meeting, Guimarães etc.


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Global Re-ordering:
 Evolution through European Networks

GEM PhD SCHOOL


**ERASMUS Mundus
Joint Doctorate**
Globalisation, the EU
& Multilateralism

KEYWORDS

AWARDS & TITLES

- A member of REPI (Recherche et enseignement en politique internationale)
- Recipient of Erasmus Mundus Fellowship by the European Commission, LUISS – GUIDO CARLI & UNIVERSITÉ LIBRE DE BRUXELLES
- Recipient of International Specialist Scholarship, YONSEI UNIVERSITY, GRADUATE SCHOOL OF INTERNATIONAL STUDIES

INTERESTING FACTS

In addition to her work experience in the field of management, Ms. Chung has also obtained qualifications as a Financial Risk Manager (Global Association of Risk Professionals) and as an Investment Specialist (Korea Investment Trust Companies Association).

ANNA CHUNG

Institutional Affiliation(s)

Erasmus Mundus Joint Doctorate (GEM PhD School), LUISS – GUIDO CARLI & UNIVERSITÉ LIBRE DE BRUXELLES

Thesis Title

'Development of Institutions on the Environmental and Technological Cooperation in Northeast Asia'

Supervisor(s)

Pr. M. Telò (IEE-ULB), Pr. R. Marchetti (LUISS)

BIOGRAPHIC ELEMENTS

Anna Chung is an Erasmus Mundus Joint Doctorate (GEM PhD School) at the LUISS – GUIDO CARLI & UNIVERSITÉ LIBRE DE BRUXELLES. She has obtained an MBA at the Yonsei Graduate School of International Studies and a BA in Economics at Yonsei University, Seoul, Korea. She has worked for the Joongang Ilbo, the EU Commission, Euromonitor International, and Allianz Asia Pacific Insurance.

RESEARCH AREAS

International Political Economy
Regional Cooperation
Northeast Asia

PUBLICATIONS

- "International Aspect of the Financial Crisis in Korea," Undergraduate Thesis, Yonsei University
- "The Effects of Mutual Funds in an Underdeveloped Financial Market: The Korean Case," Master's Thesis, Yonsei GSIS

(Presentations)

- "Institutionalized Environmental Cooperation in Northeast Asia" at GEM PhD School Workshop in February 2011, Rome, Italy
- "Time Variant in Rational Choice Institutionalism" at Waseda-GEM Summer PhD School in August 2011, Tokyo, Japan



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LIBRE
DE BRUX**

"Academic and social interactions I have experienced through GEM PhD School are invaluable assets for my thesis looking at the regional cooperation in Northeast Asia in the context of globalisation."

Anna CHUNG, August 2012


GR:REEN

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KEYWORDS

AWARDS & TITLES

- Institute of International Education: Scholarship for the B.A. 2003-2007.
- FLACSO-University of San Andrés: Scholarship for the M.A. 2009-2010.

INTERESTING FACTS

JULIANA GONZÁLEZ JÁUREGUI

Institutional Affiliation(s)

Social Sciences with an orientation in International Relations

Thesis Title

China: the Force Reshaping Latin America

Supervisor(s)

Dr. Diana Tussie.



BIOGRAPHIC ELEMENTS

- B.A. (International Relations), University of Congreso, Mendoza, Argentina, 2007.
- M.A. (International Relations and Negotiations), FLACSO-University of San Andrés in cooperation with University of Barcelona, Buenos Aires, Argentina, 2012.
- M.A. (International Relations and Negotiations), FLACSO-University of San Andrés in cooperation with University of Barcelona, Buenos Aires, Argentina, 2012.



RESEARCH AREAS

Exploring the private sector's influence in Argentina-China relations

PUBLICATIONS

- Research assistance to Diana Tussie in: "China in Latin America: State or Market?" Paper written for the CONICET International Researchers Seminar in China, October 2011.
- Research assistance in topics related to China in America Latina and Argentina at the Department of International Relations, FLACSO.



KEYWORDS

Environmental Policy;
Energy and Climate
Governance; EU-East Asia
Relations.

AWARDS & TITLES

- LLM in European and International law (China-EU School of Law; CUPL Beijing).
- MA in European Studies (Institute for European Studies; ULB Brussels).
- BA French-Anglo-American law (Universities Cergy-Pontoise / Groningen).

INTERESTING FACTS

Coraline speaks Chinese and has successfully obtained an LLM at the China-EU School of Law at the Chinese University of Political Science and Law (Beijing).

She was an intern at an environmental public interest law firm in Beijing, a public affairs consultancy in Brussels and at EIAS in Brussels.

CORALINE GORON

Institutional Affiliation(s):

GEM PhD student ULB (from 01-09-2012)

Thesis Title:

Multilevel Institutional Interplay of EU East Asia Cooperation in the Field of Energy – Climate Governance

Supervisor(s):

Prof. Francois Foret



BIOGRAPHIC ELEMENTS

Coraline obtained two master degrees and a bachelor degree; she studied at the universities of Cergy-Pontoise, Groningen, Brussels (ULB) and Beijing (CUPL). Coraline's PhD project follows from research she conducted for her master thesis in European Studies at the ULB (awarded with *la plus grande distinction*), supervised by Prof. Telò.



RESEARCH AREAS

The title of Coraline's paper is: "**The EU Aviation ETS caught between Kyoto and Chicago: Unilateral Legal Entrepreneurship in the Multilateral Governance System**". This contribution is based on her master thesis in European and International law at the CUPL.

"I try to make linkages between legal research and political science"

GORON, 2012

PUBLICATIONS

- o "Europalia. China, the Political Dimension behind a Cultural Event", *Eyes On Europe*, Issue 12, January- April 2010.
- o "The securitization of the role of European Customs", *Eyes on Europe*, Issue 14, January-April 2011.
- o "The EU and Japan working hand in hand to fight transnational crime?", European Institute for Asian Studies (EIAS), Policy Brief, October 2010.
- o "Building an ASEAN Economic Community by 2015: New Concepts for a Revival of the 'ASEAN Way' towards Regional Integration"; Research Paper, EIAS, June 2011, Brussels, Belgium; Redaction supervised by Prof. David Camroux, Senior Lecturer at Science Po Paris and Senior Advisor at EIAS.

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Global Re-ordering:
Evolution through European Networks

GEM PhD SCHOOL



ERASMUS Mundus
Joint Doctorate
Globalisation, the EU
& Multilateralism

KEYWORDS

Optimist; Friendly; Sincere;
Modest; Studious; Faithful
Hardworking; Team worker

AWARDS & TITLES

INTERESTING FACTS

Once practice teacher in
Middle school

Once intern reporter in
Qingdao

Teaching English part-time
in Shanghai

HONGXIA LIU

Institutional Affiliation(s)

School of Political Science & International Relations
Tongji University (Shanghai)

Thesis Title

Left Parties in Central & Eastern Europe (tentative)

Supervisor(s)

Prof. YANG Ye
Tongji University (Shanghai)



BIOGRAPHIC ELEMENTS

Born in Linyi, Shandong

B.A of International Politics in Qufu Normal University
Qufu is the hometown of Confucius

M.A of International Politics,
In Shanghai Normal University

RESEARCH AREAS

Central & Eastern Europe
Party Politics
Political and Social Transition



*"April showers bring may
flowers"*

Thomas Tusser, 1557

PUBLICATIONS

- 2010, "Analysis of Decentralization and Balance Principle and the significance of reference to anti-corruption in China", *Reform and Development*, Nanjing, P.R. China, No. 12
- 2010, "Analysis the motivation of climate change cooperation between China and EU", *Journal of Shanghai Normal University*, Shanghai, P.R. China, No.11

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Evolution through European Networks



EUROPEAN COMMISSION
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KEYWORDS

Comparative political economy; public policy; business regulation.

AWARDS & TITLES

- Visiting Research Fellow, GR:EEN Project, University of Warwick, 2012.
- Recipient of Pre-Dissertation Fellowship, Council for European Studies, funded by the Andrew W. Mellon Foundation, 2011.
- Outstanding Teaching Fellow, Boston University, 2010-2011
- Graduate Summer Fellow, Pardee Center, Boston University, 2010.
- Teaching Fellowship, Boston University, 2009-2013.

MATTHEW MAGUIRE

Institutional Affiliation(s)

Department of Political Science, Boston University

Thesis Title

From Private Regulation to Public Policy: The Case of Corporate Non-Financial Reporting

Supervisor(s)

Graham K. Wilson (advisor), Cathie Jo Martin, Vivien Schmidt, Dino Christenson



BIOGRAPHIC ELEMENTS

Matthew Maguire received his MSc in Comparative Politics from the London School of Economics and Political Science (2008) and his BA in History from Cornell University (2003). Matthew entered the PhD program at Boston University in Fall 2009.



Matthew has recently presented his research at the graduate student conference, "Institutional Investor and Corporate Governance for Sustainability," at the University of Oxford's School of Geography and the Environment and at the Council for European Studies' 19th International Conference of Europeanists in Boston. He has also participated in graduate workshops at Nottingham University's International Centre for Corporate Social Responsibility, Syracuse University's Maxwell School, and the Copenhagen Business School. Matthew will begin fieldwork for his dissertation in Spring 2013 with support from Boston University's Graduate Research Abroad Fellowship.



RESEARCH AREAS

Broad areas of interest include comparative political economy, public policy, political methodology, and business-government relations. Matthew's current research examines the role of government in promoting corporate social responsibility.



PUBLICATIONS

"The Future of Corporate Social Responsibility Reporting," *Issues in Brief*, No. 19, The Frederick S. Pardee Center for the Study of the Longer-Range Future, Boston University, January 2011.

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KEYWORDS

International Relations -
East Asia - People's Republic
of China - Chinese Language

AWARDS & TITLES

- Scholarship awarded by the University of Rome "La Sapienza", 2005. Beijing Advanced Chinese Mandarin course.
- Scholarship awarded by the Italian Ministry of Foreign Affairs and China Scholarship Council, 2006-2007. Beijing Advanced Chinese Mandarin course.
- Scholarship awarded by Hanban-Confucius Institute (Naples), 2012. Teaching Chinese as Foreign Language (expected August 2012).

INTERESTING FACTS

- Teaching Assistant in International Relations, Bachelor Degree level.
- Case study analysis in International Relations Theory, tutoring.
- Intensive course for Diplomatic Career-Tutor (December 2011-April 2012).
- Fluent in Chinese.

SILVIA MENEGAZZI

Institutional Affiliation(s)

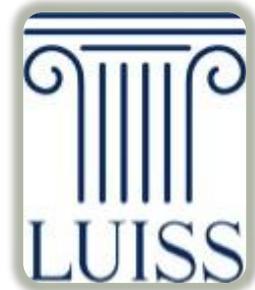
PhD Candidate, Political Theory, LUISS-Guido Carli

Thesis Title

"China and the idea-making process: the role of think tanks and epistemic communities"

Supervisor(s)

Prof. Franco Mazzei
Prof. Rafaele Marchetti



BIOGRAPHIC ELEMENTS

- ✓ 2009-2011: Master of Science, International Politics (University of London, School of Oriental and African Studies) - Final dissertation: 'The construction of a Chinese Threat in Central Asia'.
- ✓ Master of Arts, Oriental Studies ('La Sapienza University', Rome, Italy).

RESEARCH AREAS

- ✓ Foreign Policy and International Relations of the People's Republic of China.
- ✓ International Politics of East Asia.
- ✓ International Relations theory.

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Global Re-ordering:
Evolution through European Networks

GEM PhD SCHOOL



ERASMUS Mundus
Joint Doctorate
Globalisation, the EU
& Multilateralism

KEYWORDS

International political economy; Northeast Asia; China, Japan, South Korea; trade protectionism; capital controls

AWARDS & TITLES

- Fulbright Fellow, Boston University, United States
- Senior Visiting Research Student, School of International Studies at Peking University, China
- Visiting Scholar, Policy Research Institute at the Ministry of Finance, Japan
- Visiting Research Fellow, Institute of Social Science at the University of Tokyo

INTERESTING FACTS

June Park was temporarily raised in Los Angeles where she started learning English and French. Continued studies of the French language sparked her interest in the European region, and led her to study abroad at the Université de Genève in Switzerland and the Institut Français des Alpes (IFALPES) Annecy in France (2002).

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Global Re-ordering:
Evolution through European Networks

JUNE PARK

Institutional Affiliation(s)

PhD Candidate (ABD) at Boston University

Thesis Title

'China, Japan and Korea's Encounter with the U.S. Trade Deficit Challenge, 1973-2013: Bilateral Trade Imbalances, Protectionism, and Currency Wars'

Supervisor(s)

William W. Grimes (1st), Joseph Fewsmith (2nd), Kevin P. Gallagher (3rd), and Douglas Kriner (4th).



BIOGRAPHIC ELEMENTS

June Park received her B.A. and M.A. in Political Science from Korea University, with a specialisation in international security. Her professional experiences include working for the United Nations Department of Political Affairs Security Council Sanctions Subsidiary Organs Branch as well as the Council for Security Cooperation in the Asia Pacific.

RESEARCH AREAS

June Park's research focuses on trade protectionism and WTO dispute settlement; capital flows and FDI in emerging market economies; economic development and reforms; financial crises and management; and the political economy of China, Japan and Korea.

PUBLICATIONS

- o 'Resorting to International Institutions to Resolve Trade Imbalances? U.S. Protectionism via GATT/WTO Dispute Initiation' (published online, Ministry of Finance, Japan), December 2011.
- o 'From 'Cardinal Sin' to Policy Agenda? The Role of Capital Controls in Emerging Market Economies: A Study of the Korean Case, 1997-2011', 2011 Korea Economic Institute of America Emerging Scholars Special Edition of the Joint U.S.-Korea Academic Studies, March 2012.
- o 'Implications of the Bilateral Swap Agreements in Northeast Asia: Korea's Role in Regional Financial Cooperation in the era of a New Critical Juncture', Korea Policy Review, Vol. IV, John F. Kennedy School of Government, Harvard University, July 2009.
- o (Forthcoming book chapter) 'Bargaining for More: China's Initiatives for Regional Free Trade in East Asia', in Li Mingjiang eds., China Joins Global Governance, Lexington-Rowman & Littlefield, 2012.



"We live in a world where the global economy changes ubiquitously in the speed of light by the millisecond. Witnessing the changes via overseas experiences build stronger foundations for better research. Luckily, dissertation fieldwork in China and Japan in the past two years have clearly made me a better researcher."

JUNE PARK, August 2012

GEM PhD SCHOOL


**ERASMUS Mundus
Joint Doctorate**
Globalisation, the EU
& Multilateralism

KEYWORDS

International relations;
comparative studies;
Vietnamese foreign policy;
IR theory, East Asia

AWARDS & TITLES

- Endeavour Prime Minister's Australia Asia Incoming Postgraduate Award
- East-West Center Fellowship
- ASEAN graduate scholarship
- Lectureship at the Department of International Politics and Diplomacy and research affiliate at the Institute for Foreign Policy and Strategic Studies - Diplomatic Academy of Vietnam, Ministry of Foreign Affairs of Vietnam.


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Global Re-ordering:
Evolution through European Networks

THI THUY DO

Institutional Affiliation(s)

Department of International Relations,
Australian National University

Thesis Title

The theoretical evolution of East Asian IR Studies:
Old paths, new directions?

Supervisor(s)

Professor William Tow



BIOGRAPHIC ELEMENTS

Miss Thuy Do obtained her BA with first class honours from the Institute for International Relations, Hanoi, and a MSc with distinction from the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore. Before joining the ANU, she was a visiting scholar at RSIS and a fellow in the Asia-Pacific Leadership Program in Hawaii and Washington, DC. In 2011, she was granted the prestigious 2012 Endeavour Prime Minister's Australia Asia Incoming Postgraduate Award to pursue her PhD studies in the Department of International Relations, Australian National University. She has been a permanent lecturer of international relations at the Department of International Politics and Diplomacy since 2004.



RESEARCH AREAS

International relations and multilateralism in the Asia-Pacific; International relations theory; Vietnam's foreign policy; Comparative area studies

SELECTED PUBLICATIONS

- o The implementation of Vietnam-China's Land Border Treaty: bilateral and regional implications, RSIS Working Paper, Nanyang Technological University, Singapore, March 2009.
- o Reasoning NATO's relevance in post Cold - War Europe and the lack of an APTO in Asia: a constructivist approach, International Studies, Diplomatic Academy of Vietnam, June 2009.
- o Vietnam's diplomacy in 2010: from vision to action, Asia-Pacific Bulletin, East-West Center, Washington D.C., March 2010.
- o Understanding Chinese Foreign Policy Studies under IR Theory framework, International Studies, Hanoi, December 2010 (in Vietnamese).
- o New thinking about the history issue: Japan's lost chance in China?, International Studies, Hanoi, December 2010.
- o The end of the Cold War: end of theory and history?, International Studies, Hanoi, December 2011.

Personal Motto:

*"Not all the roads are
Roman but they may
still lead to Rome."*



KEYWORDS

Grand strategy, instruments of diplomacy, strategic culture, defense planning.

AWARDS & TITLES

- Lecturer (UVA)
- Strategic expert (Pax Ludens Foundation)
- -Consultant (DAG)

INTERESTING FACTS

The Doctoral candidate's dissertation explores the extent to which previous experiences such with victory and defeat in war are reflected on the grand strategies of the United States, the United Kingdom, France and Germany

PAUL VANHOOF

Institutional Affiliation

PhD Candidate
 University of Amsterdam
 Amsterdam Institute for Social Science
 Research (AISSR)

Thesis Topic

The origins of grand strategy and strategic culture

Supervisor

Prof. Dr. Brian Burgoon



BIOGRAPHIC ELEMENTS

- Lecturer 'Grand Strategy', University of Amsterdam
- Strategic Expert, Pax Ludens Simulation Gaming and Conflict Resolution Stichting
- Consultant, Dialogue Advisory Group (DAG)
- Assistant lecturer International Relations, University of Amsterdam
- Policy analyst, The Hague, Centre for Strategic Studies
- Junior Lecturer, International relations and political economy, University of Amsterdam

RESEARCH AREAS

International relations, defence policy, International security, European and American security policy,

PUBLICATIONS

- S. de Spiegeleire, P. van Hooft, C. Culpepper & R. Willems (2009). *Closing the loop: towards strategic defence management*. Den Haag: The Hague Centre for Strategic Studies
- P.A. van Hooft (2007). De Europese paradox: nederlaag- en overwinningculturen in drie Europese stromingen. *Vrede en veiligheid*, 36(1)
- P. Aarts, G. Eisenloeffel & P.A. van Hooft (2005). Het Iraakse Fiasco: strategie, cultuur en de mogelijkheid om te leren. *Internationale Spectator*, 59(1), 45-49
- P. Aarts, G. Eisenloeffel & P.A. van Hooft (2005). Cultuur en strategie: de Verenigde Staten en het Iraakse fiasco. *Vrede en veiligheid*, 34(2), 194-213

GREEN

Global Re-ordering:
Evolution through European Networks



KEYWORDS

International Crisis
 Management; EU-China
 relations; Regionalization

AWARDS & TITLES

- B.A., Sociology, Fudan University 2001
- M.A., European Studies, Macau University 2009
- Deputy Director, Department of Consultancy, Shanghai Institute for European Studies

INTERESTING FACTS

Peter Yang Haifeng wrote his Master's Thesis on ASEM

He participated in a workshop in Singapore in June 2012 entitled "Researching the EU from Asia-Pacific: New Perspectives and Frontiers"

He has contributed regular political analysis for the local Jiefang Daily (Shanghai)

HAIFENG YANG

Fudan University

Department of International Politics,
 School of International Relations and Public Affairs

Thesis Title (undecided)

Focus: China – EU and International Crisis
 Management

Supervisor(s)

Professor Pan Zhongqi, Fudan University



BIOGRAPHIC ELEMENTS

- Yang Haifeng was born in 1978, in Shanghai, China; his English name is Peter.
- He has lived in Shanghai and Macau for his graduate studies.
- He studied sociology as under-graduate; then he specialized in European studies and International Relations for his graduate and post-graduate studies.



RESEARCH AREAS

- Regionalization
- Leadership
- European integration
- EU-China relations



PUBLICATIONS

Academic articles

- 'An Analysis of ASEM's Institutionalization', in Wu Yikang, ed., *Orientation of the European Integration and China-EU Relations*, Beijing: Current Affairs Press, 2008, pp.226-244.
- 'An Analysis of PM Blair's Value-Oriented Diplomacy on China', in Dai Bingran, ed., *Europe and Its External Relations in the Lisbon Treaty Era*, Beijing: Current Affairs Press, 2010, pp.172-185. (Co-author with Xin Hua)
- Europe in a Transitional World: Challenges and Trends – 2011 Annual Meeting of SIES, *Chinese Journal of European Studies*, Vol.30, No.2, 2012, pp.152-154.

Viewpoints

- 'Military Reform of Germany Deteriorates ESDP', Jiefang Daily (Shanghai), Aug. 30th, 2010. (Co-author with Zhang Zuqian)
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*"I believe in Reason in
 Common Sense"*

Yang Haifeng, 2012



KEYWORDS

China-EU; GEM; Nationalism; Intervention; History; East Asian Studies; Ethnicity; Politics

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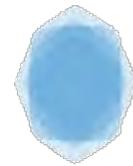
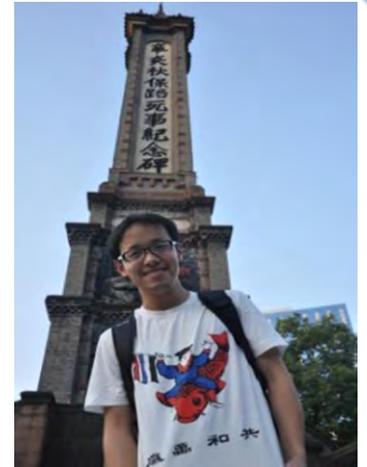
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GEM PhD SCHOOL

"All differences in this world are of degree, and not of kind, because oneness is the secret of everything."

Swami Vivekananda

GR:GREEN

Global Re-ordering:
Evolution through European Networks

Part 5 – PUBLISHED WORKING PAPERS



GR:EEEN-GEM DOCTORAL WORKING PAPERS SERIES

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A tool for security governance: how is the EU fostering and shaping ECOWAS security and defense regionalization process?

Paper prepared for KFG Workshop

„Regional Organizations as Global Players Active = Influential?’

28-29 October 2011, Berlin

Introduction

The European Union (EU) is the regional organization with the most developed and active external relations in the world. In spite of the ongoing debate on whether it is a global actor or not and on the EU's capacities to act (Hill 1999; Cremona 2004; Petiteville 2006), it tries to contribute to global governance in a variety of fields (trade, humanitarian aid, development, environment, peace and security, etc.). Moreover, since the 1990's and the breakup of Yugoslavia, and since the beginning of the 2000's with the terrorist attacks in the USA, Madrid and London, the war in Iraq, the increasing phenomenon of state failure, the development of organized crime and the risk of weapons of mass destruction (WMD) spreading, the EU has increasingly been focusing on global security challenges as well as on how to deal with these „new' threats that, according to it, are stemming from other parts of the world and endangering Europe (European Security Strategy, 2003).

One of the instruments the EU uses for global governance is interregional cooperation¹ and, through this cooperation, the promotion of regional integration as a way to respond to different kind of challenges such as peace and security, economic development or insertion into the globalized economy. This dimension of

1 Interregional cooperation is carried out in multiple fields such as trade, economic integration, development assistance, security, institution building, etc. The EU has regional policies or has concluded interregional agreements with almost every regions and regional organizations in the world.

EU foreign policy² logically originates in its own historical experience and the perception of the great success it has achieved transforming a war-prone region into a security community (Alec de Flers & Regelsberger 2005; Keukeleire & MacNaughtan 2008).

In this sense, Waeber (1996) argues convincingly that in Europe, security, integration and identity have been tied together in a specific narrative: integration has been given a security quality as a matter of survival for Europe, a necessity for its peace and stability with the aim not to go back to the past wars and avoid fragmentation. Therefore, my argument is that regional integration as a part of EU's identity and security has been translated through its foreign policy into the promotion of regional integration in other regions of the world as an answer to their security issues, but also to the EU's own security issues.

Interregional cooperation, and in particular the promotion of regional integration is thus emphasized in many EU official documents as a way for the EU to contribute to security governance. Indeed, the European Security Strategy (2003) stresses that "regional organizations (...) make an important contribution to a more orderly world"; and in its Communication on Conflict Prevention (2001) the European Commission commits to "give higher priority to its support for regional integration and in particular regional organizations with a clear conflict prevention mandate". Hence, promotion of regional integration seems to be for the EU a necessary part of security governance, stemming from its own securitization of integration as something essential for EU security (Waeber 1996).

The main tools used by the EU in this regard are the diverse kind of agreements concluded with regions and regional organizations throughout the world, through which the EU channels financial and technical aid and, within them, the provisions for political dialogue. In many cases these agreements enable the EU to finance programs of partner regional organizations and help building their institutional capacities.

My paper will focus in particular on the assistance given by the EU to the Economic Community of West African States (ECOWAS) within the framework of the Cotonou Agreement and channeled through the European Community-West Africa Regional Indicative Programs, as well as on the political dialogue between the two regions. My argument is that the EU is trying to promote and influence the West African security and defense regionalization process going on with ECOWAS³— and is, to a certain extent, shaping this process by exporting its political values and security norms through different means (socialization through political dialogue, technical and financial assistance, etc.). Therefore, a number of questions will be studied throughout this paper: why and how is the EU engaging in security governance in West Africa? Which is the main discourse(s) legitimizing this engagement? What makes this „shaping’ possible? Is there a tension between the EU's attempt to shape ECOWAS security and defense regionalization process and the concept of „local ownership’ and „partnership’ in the EU discourse?

The methodology I use in this paper relies on a discursive analysis of the EU and ECOWAS official documents, mainly in the fields of security and development; as well as on a discursive analysis of the interviews I carried out with European Commission and EEAS officials, and with Western African diplomatic officials. The objective is, on the one hand, to understand EU's main discourse, how its identity constitute its action and objectives in this particular dimension of its foreign policy; on the other hand, to understand how ECOWAS perceives its relationship with the EU and how it has been adapting to this exposure to EU's ambitions, objectives, values and norms. My analysis relies as well on other primary material such as action plans, cooperation programs and their evaluations elaborated by the EU and

² EU foreign policy includes the policy led by the European External Action Service (EEAS) including the CFSP and CSDP, by the European Commission directorates having an external dimension, and the foreign policy of EU member states. However, in this paper I will focus on the foreign policy carried out by the EEAS and implemented by DEVCO and the EU delegations on the ground (formerly to the Lisbon Treaty reform, by DG DEV and AIDCO).

³ It has to be noted, however, that ECOWAS does not include all West African countries; Mauritania is not anymore part of the regional organization.

ECOWAS, and also the reports of meetings in the framework of the political dialogue. This paper also draws from the literature on EU foreign policy.

The EU's structural foreign policy and security governance

Conflict prevention through a structural foreign policy

According to Manners (Manner 2002, p. 240), the EU is predisposed to act in a normative way – to promote norms and values – because of three main features. Firstly, as a result of EU's historical construction; secondly because of its characteristics as a hybrid polity; and lastly, as a consequence of its political-legal constitution, its constitutional norms embodying the principles of democracy, rule of law, social justice and respect for human rights. We can link this explanation of the EU as a normative power to the EU's approach to security governance, and in particular to one of its main component, conflict prevention⁴; on the one hand, the transformation of a conflict-prone Europe into a peaceful and prosperous area where war is not even a possible solution anymore resulted in the EU's focus on conflict prevention as aiming structural stability and at addressing the roots causes of conflict⁵. Indeed, European integration is associated by the EU to a long-term conflict prevention and peacebuilding project:

“The EU itself an on-going exercise in making peace and prosperity, has a big role to play in global efforts for conflict prevention.” (Communication from the Commission on Conflict Prevention 2001).

And:

“The European Union is a successful example of conflict prevention, based on democratic values and respect for human rights, justice and solidarity, economic prosperity and sustainable development.” (EU Programme for the Prevention of Violent Conflicts 2001)

Therefore, in its foreign policy the EU promotes a long term holistic and structural approach to conflict prevention through partnership and multilateralism, and using tools such as development and humanitarian aid, trade, interregional cooperation, political dialogue, etc. (Manners 2006; Lucarelli & Menotti 2006)⁶. Even if it is recognized that symptoms of conflict should also be addressed through more conventional crisis management, the emphasis is on structural conflict prevention, while the recourse to force remains the last possible option:

“Development policy and other co-operation programmes provide the most powerful instruments at the Community's disposal for treating the root causes of conflict. There is a need to take a genuinely long-term

4Indeed, the European Security Strategy (2003), states that “with the new threats, the first line of defense will often be abroad. The new threats are dynamic. (...) This implies that we should be ready to act before a crisis occurs. Conflict prevention and threat prevention cannot start too early.”

5Addressing structural instability and root causes of conflict means tackling the socio-economic inequalities, environmental, natural resources, security issues and institutional weaknesses that, most of the time, are at the origin of violent conflict.

6The EU's discourse points to extensive and comprehensive development assistance and programs respecting the local ownership of the beneficiaries (Communication from the Commission on Conflict Prevention 2001; European Consensus on Development 2005)

and integrated approach, which will address all aspects of structural instability in countries at risk.” (Communication from the Commission on Conflict Prevention 2001)

This is what Manners – trying to differentiate a European from a more general Western approach – calls the EU’s value of „sustainable peace’ which would be the EU’s own translation of the more general value of ‚peace’ (Manners 2006; Manners 2006)⁷. On the other hand, the construction of regional integration – through the pooling of sovereignty and the building of supranational law – on the basis of principles such as democracy, rule of law and respect for human rights, turned the promotion of regional integration as well as of these principles into major dimensions of EU’s conflict prevention approach, and more generally of EU’s involvement in security governance. Indeed, as I mentioned in the introduction, integration has been at some point securitized, it constitutes Europe’s identity and it is seen as a matter of survival for Europe to escape fragmentation and the return to past wars and divisions (Waever 1996). The result is that integration has the tendency to be understood by the EU as an imperative for peace and security also in other regions of the world following the logic that if it has been good – even necessary – for Europe, it should as well be good for others⁸.

This holistic conflict prevention approach of the EU can be better understood using the concept of structural foreign policy elaborated by Keukeleire. Structural foreign policy is a policy conducted over the long-term, seeking to influence or to shape sustainable political, legal, socio-economic, security and mental structures. The objective of a structural foreign policy would be to shape structures that are sustainable in the long term, including when external pressure and/or support is gone (Keukeleire & Macnaughtan 2008, pp. 25-27). In this sense, the EU has a structural foreign policy aiming at shaping, transforming its international environment through its agreements, development programs, enlargement policy, etc; trying to diffuse its values and norms internationally, with the will and the belief it can further its particular view of global governance. In the case of security governance in Western Africa, I will argue that the EU uses a structural foreign policy in two ways in order to influence and shape the peace and security architecture of the region. On the one hand, the EU promotes regional integration as the answer to security and stability issues, through the financing of ECOWAS security programs and supporting the development of its institutional capabilities. On the other hand, the EU is trying to export its political constitutional values and security norms, among which its own long-term holistic conflict prevention approach to Western Africa. The objective would be to “make these norms part of the mental structure of the elites and the populations” in the region (Keukeleire & Macnaughtan 2008, p. 223); thus in this case that ECOWAS officials and Western African elites in particular internalize the EU’s approach, norms and values.

4

The EU has one crucial instrument to carry out its structural foreign policy here, the Cotonou Agreement⁹. Through this Agreement, as I will detail later, funding is directed to ECOWAS to support its programs and build its institutional capacity; it also provides for an on-going political dialogue between the

⁷Manners argues that none of the general values (peace, democracy, respect for human rights, rule of law) promoted by the EU are unique to the EU and its foreign policy; but what is interesting is the way in which particular EU interpretation of these values have been translated into guidelines principles of EU policy. These principles include conflict prevention principles in peace; conditionality principles for human rights, democracy, rule of law and good governance.

⁸This belief was confirmed in my interviews with EEAS officials (interviews on 13 September 2011 and on 16 September 2011).

⁹Legal agreements are the main instruments for EU’s structural foreign policy. They represent a basis to support and/or induce structural reforms, and strengthened political, legal and socio-economic structures. (Keukeleire & Macnaughtan 2008, p. 207)

two. Political dialogue is particularly relevant because it enables socialization¹⁰ to take place through exchanges of view on political and security issues, dialogue around EU norms and values, and through the creation of a foreign policy machinery with regular meetings at different levels (Balfour 2006; Keukeleire & Macnaughtan 2008).

The EU discourses and security governance

Having described the nature of EU foreign policy, and the link between its identity, its security and the promotion of regional integration as a foreign policy action in the area of security governance and, in particular, of conflict prevention, I will now describe the EU's discourses at the basis of its action in security governance.

Firstly, one of the EU's discourses concerns its own security, presented as one of its main reasons to get involved into security governance and conflict prevention. This aspect is the central topic of the European Security Strategy (2003) which enumerates the list of „new' security threats that Europe is facing (terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organized crime). The Strategy focuses in particular on the EU's vulnerability in the post Cold War globalized era:

“The post Cold War is one of increasingly open borders in which the internal and external aspects are indissolubly linked (...). These developments (...) have increased European dependence – and so vulnerability.”

5

And:

“Europe faces new threats which are more diverse, less visible and less predictable.”

It also points to other regions of the world, from where negative security externalities are stemming and affecting Europe's security in the form of drug trafficking, terrorism or migration:

“Taking these elements together – terrorism committed to maximum violence, the availability of weapons of mass destruction, organised crime, the weakening of the state system and the privatisation of force – we could be confronted with a very radical threat indeed.” (European Security Strategy 2003)

The somehow dramatic tone and wording used throughout the Strategy is used to demonstrate and legitimize – to national government and populations – the need for the EU's action in security governance. The discourse is one of a vulnerable Europe endangered by unstable regions in other part of the world, in

¹⁰According to Checkel (2007, p. 5), socialization is “a process of inducting actors into the norms and rules of a given community”.

order to promote actions to defend the EU against these threats. Of course, some areas are prioritized – being more sensitive for the EU – in particular its neighbourhood and Africa. Thus, as I have already underlined, the EU's promotion of regional integration – an essential dimension of its own security identity – is linked to its security concern. The discourse is that the European experience, replicated in other regions, would provide for economic development, democratic stability and a peaceful world (Terpan 2010):

“Both among its immediate neighbours and throughout the world, the EU seeks to project stability in supporting regional integration.” (Communication from the Commission on Conflict Prevention 2001)

On the other hand, this security discourse is linked to regional integration through an general consensus on the fact that security issues need regional answers. It is in line with and linked to the ‚logic‘, also developed by prominent scholars (Lake & Morgan 1997; Buzan & Waever 2003), that security issues are in general transnational and very often trans-regional, therefore they cannot be addressed efficiently by individual states¹¹. The adequate answer in this case would be to adopt a regional approach to peace and security:

“Coherent policies are also needed regionally, especially in dealing with conflict. Problems are rarely solved on a single country basis, or without regional support, as in different ways experience in both the Balkans and West Africa.” (European Security Strategy, 2003)

Indeed, in all its thematic documents dealing with security issues the EU recommends the support of regional initiatives. This trend can be found in the EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (2006), in the EU Programme for the Prevention of Violent Conflicts (2001), in the Communication ‚Developing a strategic concept on tackling organized crime‘ (2005), etc.

The second basic discourse supporting EU's involvement in security governance relates to a ‚solidarity‘ discourse. Throughout all the texts, the prevailing idea is that the EU has a ‚mission‘ and a duty to fulfil towards poorer and more unstable parts of the world because of its own history, prosperity and peace, but also because it has the necessary means and instruments for launching holistic conflict prevention policies:

“The European Union has a duty to try to address the many cross-cutting issues that generate or contribute to conflict. It is also well placed to do this. It has the duty because it is one of the main promoters and beneficiaries of global openness and co-operation. It is well placed because it has the means and the authority to make a real impact.” (Communication from the Commission on Conflict Prevention 2001)

Throughout this discourse the EU is constructed as a model which should help other less advanced regions – meaning less developed and still prone to conflict – to become more like it.

11This was one of the main arguments of the EEAS officials I interviewed (interviews on September, 13th 2011 and on September 16th, 2011).

Thirdly, the other major idea present in the EU's discourses is that the EU has to assert itself as a major global actor, increase its influence in international relations – security governance being a major area to do so – and, by doing so, promote its worldview of a peaceful world based on multilateralism. These aspects are very present in the European Security Strategy (2003) which is considered a turning point for the EU's assertion as a global actor:

“A European Union which takes greater responsibility and which is more active will be one which carries greater political weight.”

And:

“In a world of global threats and global media, our security and prosperity increasingly depend of an effective multilateral system. The development of a stronger international society, well functioning international institutions and a rule-based international order is our objective.”

This general discourse implies different things. On the one hand, establishing relations with other regional actors is seen as a way to gain more weight in international relations. Indeed, the EU is supposed to be a privileged political partner for any regional organization in the world; it can therefore exert its influence on them in a favorable context for implementing its own policies and priorities, and project its conception of governance (Nivet 2006; Terpan 2010). In this line, when interviewed on September 13th, 2011, an EEAS official working on West Africa, explained to me that the EU is a natural interlocutor for ECOWAS because the organization is the mirror of the EU in West Africa. On the other hand, the promotion of multilateralism is also linked to the EU's link between security, identity and regional integration: the EU's discourse points to a multilateralism based on regional organizations as one of the pathways to peace and security¹².

7

Thus, these three discourses are the basis of the EU's foreign policy action in the area of security governance; they are linked and reinforce each other giving a strong ground for the EU's promotion of regional integration as a mean to insure its own security as well as the security and stability of other regions.

The ECOWAS and the security situation in Western Africa

The European Union involvement in ECOWAS's security issues

¹² This belief should nevertheless be considered carefully. It seems to ignore the fact that not all community-building projects rely on democracy and rule of law (ASEAN is an example); moreover, the way an interstate community will interact with the rest of the world is also likely to depend of its collective identity, which means it might not be automatically peaceful or open (Rumelili 2008).

Keeping in mind the discourses justifying the EU's involvement in security governance, why is West Africa's security situation and ECOWAS of particular importance for the EU, while this region is not even included in what the EU considers its „neighborhood'? Indeed, the EU's involvement increased significantly in the last years: in the European Community - West Africa Regional Strategy Paper and Regional Indicative Programme (RIP) 2002-2007 support for conflict prevention and good governance was a non focal sector and was attributed 10 million euros, mainly in order to support ECOWAS; whereas in the 2008-2013 RIP, “consolidation of good governance and regional stability” became the second focal sector with 119 million euro, representing 20% of the total allocation of funds through the RIP.

One of the answers to this question concerns the EU's security. I stressed in the preceding section how the EU's discourse is concerned with these „new' security threats. In fact, West Africa, as I will show later, seems to reunites all these security problems: all the states in the region are fragile states with weak institutions and control on their territory, which is a reason why drug trafficking, among other traffics, is increasing exponentially. The cocaine route originating from Latin America, now passes through West Africa before entering Europe. Terrorism is a recent phenomenon in the region, particularly in the Sahel region with the development of Al-Qaeda in the Islamic Maghreb (AQIM) and the kidnapping of EU citizens. Adding to these, the EU member states are increasingly concerned with illegal migration following the patterns of former colonial relations; these illegal migrants are fleeing from conflicts and underdevelopment. These issues are perceived in Europe as threatening its stability, and consequently the discourse pointing to needed actions is strong; as a matter of fact, West Africa is even brought up in the European Security Strategy as an example of an alarming situation requiring EU's involvement:

“The risks of proliferation grow over time; left alone, terrorist networks will become ever more dangerous. State failure and organised crime spread if they are neglected – as we have seen in West Africa. This implies that we should be ready to act before a crisis occurs.” (European Security Strategy 2003)

8

This large augmentation is connected to the link the EU has been making since the beginning of the 2000's between security and development. The European Security Strategy (2003) states for example that security is a precondition for development. The result has been an increasing importance of security issues and objectives in EU development programs.

Another answer relates to the close relationship that some EU member states are keeping with ECOWAS member states since the end of colonization. It is the case of France with Ivory Coast and Mali for example, or the UK with Nigeria and Ghana. Indeed West Africa was colonized by three EU member states: France, the UK and Portugal. The links are still very strong and these EU member states, particularly France and the UK, are investing a lot in Western African countries in terms of economic, development and security policies, trying to maintain and/or further their influence. In the area of security, using the EU framework is also a way to „europeanize' their foreign policy and be less exposed to accusation of neo-colonialism or paternalism. Moreover, these close links and shared history between Europe and West Africa, but also more generally with Africa, enable the EU to exert a particular influence in the region¹³. Hence, involvement in West Africa is an opportunity – reinforced by the demands from ECOWAS member states for

13Taking into account that the EU and the EU member states together are the first donor in Africa. Moreover, the share of Sub-Saharan Africa in total aid commitments from the EU has even increased from 26% in 2005 to 40% in 2008 (Kitt 2010).

cooperation and assistance¹⁴ (Nivet, 2006), as well by the „special’ relationship the EU has with other regional organizations – to further its global influence. Africa is becoming increasingly important for the EU on a foreign and security policies level, as an important element of the EU’s ambition to develop a “global foreign policy presence” (Keukeleire & Macnaughtan 2008, p. 216).

The security situation in Western Africa

West Africa is a “geographical expression” describing a heterogeneous and “complex geo-political and social construction” (Francis 2010). The region includes sixteen very different states in terms of territorial size, population, economic strength, history – they emerged from the colonization of France, UK and Portugal¹⁵ –, and are among the most underdeveloped states in terms of socio-economic development¹⁶. Moreover, they are situated at different stage of democratization, from consolidating democracy (Senegal, Ghana), to post conflict societies (Liberia, Sierra Leone) and to democratic transition (Nigeria) (Ebo 2007). The colonization of the region by three different countries led to cultural, linguistic, political and administrative differences which often fuelled political disputes among the leaders of Western African countries (Francis 2010); inter-state conflict is, however, not really an issue today anymore in the region. Nevertheless, the security situation in Western Africa is complex and interconnected: what is called „classical’ security issues such as violent conflicts (mostly ethnic-based, political, internal conflicts), „new’ security threats such as terrorism and organized crime, but also „human security’ issues (chronic poverty, underdevelopment, environmental and natural resources problems, etc).

Most of the literature on West African’s history point to the colonization period as being at the source of many of these problems. On the one hand, the borders designed by the colonial powers divided ethnic groups among different states and regrouped others artificially in new states – leading to various intra-state conflicts opposing ethnic groups. On the other hand, the transplantation of European administrative and institutional structures, disconnected from the traditional African society and its patterns of collaboration led to the fragility of the new African states, the dominance of neo-patrimonialism and an absence of democratic structures, culture and practices (Alao 2000). The consequence has been, since then, the chronic political instability of West African countries. Periods of military dictatorship have been alternating with transitions to democracy, often interrupted by tense elections, violence and new coup d’état. Even though today most of the countries find themselves in a phase of democratic transition or consolidation, democracy is fragile and the possibility of coup d’état is still present like it was recently witnessed in Guinea

14During my interviews with Malian diplomatic officials on September 14th, 2011 and with Dr. Ibn Chambas, former President of the ECOWAS Commission, on the same date, the general discourse was that the EU should provide more assistance to ECOWAS, in particular in the field of organized crime, and mostly against drug trafficking. Dr Ibn Chambas also commented that the EU should share its ‘best practices’ with ECOWAS in terms of institutional organization. These demands were confirmed by an EEAS official working on West Africa (September 13th, 2011) who told me that ECOWAS officials asked the European Commission to send an EU mission to share its experience on the institutional level.

15The Francophone states are Senegal, Mali, Cote d’Ivoire, Burkina Faso, Guinea, Niger, Benin, Togo and Mauritania; the Anglophone states are Sierra Leone, Nigeria, Ghana, Liberia, Gambia; the Lusophone states are Guinea Bissau and Cape Verde.

16The combined GDP of ECOWAS states in 2005 is 139 billion of dollars, but with Nigeria representing 78 billion, while Liberia and Guinea Bissau having less than one million (Ebo 2007).

or Cote d'Ivoire¹⁷ (Madior Fall 2008). The transplantation of foreign administrative and institutional structures also led to structural failure in the administration of justice and the inability of the states to guarantee the security of their populations (Alao 2000); the preoccupation of the authoritarian governments in power was mainly regime survival and self-enrichment instead of the security and welfare of their populations. Even after transition to democracy the rule of law remained very weak in most of the countries; hence, Ebo (2007, p. 3) argues that a "defining feature of security governance in the sub region has been the characteristic failure of the state to provide and/or guarantee public security". He also adds that this long period of military rules and the crisis of the post-colonial state have produced predatory statutory institutions – threatening and abusing citizens– and informal security structures often beyond the state (non-state actors opposing the states or allied with it) and sharing its theoretical monopoly of force (Ebo 2007, p. 4).

Chronic poverty, underdevelopment – originating partly from the colonization period – and internal conflicts also created a favorable context for the development of criminality. On the one hand, underdevelopment turned Western African countries into easy prey for organized crime (drug, human, oil, medicines, cigarettes, toxic wastes trafficking)¹⁸. This phenomenon, and in particular drug trafficking becoming a major problem in the region¹⁹, is destabilizing the fragile democratic institutions of these countries. According to Aning (2009) there is the possibility of drug barons taking over political parties and the parliaments and executive branches of governments in West Africa because of the absence of state support for political parties and the lack of effective regulation on campaign financing²⁰. On the other hand, the outbreak of internal conflicts like in Liberia in 1989 and Sierra Leone in 1991 opened the way throughout the whole region for the trafficking of small weapons, natural resources such as diamond to finance the war, and other criminal activities sustaining the war economy (Bah 2005; Francis 2010).

Finally, underdevelopment, ethnic and religious tension provided the space for the development of fundamentalism²¹. The result has been the apparition of terrorism in the region linked to AQIM and aiming both at kidnapping foreigners and at actions against state's institutions²².

17 See the Report of the Secretary-General on the activities of the United Nations office for West Africa (UNOWA) (2011); during my interviews with Malian diplomatic officials (September 14th, 2011) and with Dr Ibn Chambas (September 14th, 2011), they repeatedly insisted on the major problem of political succession and on the fragility of democracy in Western Africa.

18 See UNODC Regional Programme for West Africa 2010-2014.

19 "UNODC estimates that around 40 tons of cocaine consumed in Europe in 2006 had been trafficked through West Africa" (UNODC Regional Programme for West Africa 2010-2014)

20 Dr Ibn Chambas (interview on September 14th, 2011) also pointed to drug trafficking as one of the main security problems of the region and to its consequence on the political sphere and security institutions through the bribing of officials.

21 Nevertheless, it has to be noted that the development of Islamic fundamentalism has its roots in the Arabic colonization which preceded Western colonization, and is fostered by the spread of a political Islam coming from the Gulf countries.

22 See the report of the Secretary-General on the activities of the United Nations office for West Africa (UNOWA) 2011 and the UNODC Regional Programme for West Africa 2010-2014.

These security problems thus seem closely connected to each other. The trans-regional dimension can be emphasized: during the many civil wars, neighboring states were involved in the conflicts supporting either the governments or the rebels, refugees left for neighboring countries and contributed to destabilize them by getting involved in criminal activities or proposing their services as mercenaries; organized criminality and terrorist group are developing their network throughout the whole region (Francis 2010; Bah 2005; UNOWA 2011), etc. The EU and ECOWAS discourses favoring a regional approach to security issues stems from this situation of interconnection, as they framed increased regionalization as the solution to resolve it. In line with this discourse, ECOWAS has started to develop a regional peace and security architecture since the beginning of the 1990's.

The development of ECOWAS security architecture

What is striking is that, in spite of being the main purpose of ECOWAS in the Treaty, regional economic integration is less advanced and integrated than ECOWAS security mandate. In fact, the creation of ECOWAS was led by a mix of economic, political and security considerations; when established by the Treaty of Lagos in 1975, it was conceived as a mean to gain economic independence, self-sufficiency within the region and to support development (Alao 2000). However, the main interests of the governing political or military leaders were regime survival and the accumulation of wealth for them and their supporters (neo-patrimonialism); regional integration, with the Protocol of Non-aggression (1978) and the Protocol on Mutual Assistance on Defense (1981), was instrumentalized for this purpose (Alao 2000; Faria 2004; Ebo 2007). Later on, the creation of the Economic Community of West African States Cease-fire Monitoring Group (ECOMOG) in 1990 to deal with the civil war in Liberia was the result of a security vacuum after the end of the Cold War²³, a fear for regime stability and of spillover of civil war; while the deepening of integration with the Treaty of Abuja in 1993 was also the consequence of these security and stability issues, as well as of democratization processes, and of the will to avoid economic marginalization.

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Therefore, as I mentioned, in the 1990's, the internal conflicts in Liberia (1989), Sierra Leone (1991), Guinea-Bissau (1998-99), Cote d'Ivoire (2002) and Liberia (2003), triggered a regional response with the creation of an *ad hoc* instrument, the ECOMOG. An important amount of literature analyzes ECOMOG's interventions in these conflicts as ECOMOG's intervention in Liberia is a symbolic event, being the first ever African peace mission. This literature is quite contradictory, one part stressing its success and analyzing its shortcomings (Faria 2004, Alao 2000, etc.), while another part is mainly pointing to its failures and weaknesses (Obi 2009; Francis 2010; etc). Nevertheless, ECOMOG is the point of departure for the development of a regional architecture of security in West Africa. Since then, ECOWAS has been trying to develop a permanent institutional and normative framework to address these challenges with its Mechanism for Conflict Prevention Management, Resolution, Peace-keeping and Security (1999) working, as Ebo demonstrates, as a "pivot for the evolution of a related body of normative instruments and confidence building measures which have come to form the core of regional security cooperation in West Africa" (Ebo 2007). This Mechanism introduced an important change by moving beyond the strict sovereignty of states to intervention in the case of an "internal conflict that threatens to trigger a humanitarian disaster, or, that poses a serious threat to peace and security in the sub-region" (art.25). It was then complemented by a Moratorium on Small Arms and Light Weapons (SALW) (1998)²⁴ replaced

23Western powers were unwilling to intervene directly in the Western African conflicts, as well as the UN which was already overloaded and lacking capabilities to deal with other crises (Faria 2004).

24The Moratorium is also a landmark as it was the first attempt by any African regional organization to establish measures against SALW (Garcia 2009).

later by a binding Convention on SALW (2006), the Supplementary Protocol on Democracy and Good Governance (2001)²⁵, The Political declaration on Drug Abuse, Illicit Drug Trafficking and Organized Crimes in West Africa (2008) and its Action Plan, ECOWAS Common Approach on Migration (2008), the ECOWAS Conflict Prevention Framework (2008), etc. Nowadays, ECOWAS is in the process of adopting a West African Code of Conduct for Armed Forces and Security Service, establishing an ECOWAS Standby Force (ESF) of specially trained and equipped forces from the 15 member states, while a peace and security early warning system, the ECOWAS Warning and Response Network (ECOWARN), has been set up²⁶.

In spite of these developments, this regional framework remains weak because of the lack of resources and capabilities of the organization. The problems of ECOMOG have already been analyzed by many scholars (Alao 2000, Faria 2004, Obi 2009, Francis 2010, etc.), they usually point to: the lack of financial resources and equipment; an unclear mandate, lack of transparency and neutrality; a lack of political control over the military; the problem of Nigeria's domination; a lack of joint preparations; etc. Nevertheless, over its many missions, ECOMOG has managed to improve its practices and capabilities; it is now to be seen how this will developed with the establishment of the ESF.

It is, however, important to note that it is already surprising that a region with states facing such poverty problems, political instability and having relatively weak institutional capabilities was capable to achieve what ECOWAS has achieved in the area of peace and security (Ebo 2007). Thus, the criticism on the lack of political will is not always relevant in particular when it comes to intervening or deploying mediation efforts. This criticism is usually more pertinent when it comes to the implementation at the national level of the regional decisions and of the normative framework (Faria 2004; Nivet 2006; Ebo 2007; Obi 2009).

The EU and the fostering/shaping of ECOWAS security and defense regionalization process

In this section, I focus exclusively on the action of the EU towards ECOWAS in the field of peace and security. Initially, it has to be noted that the EU strategy in the region in the area of peace, stability and security also include the programs directed to ECOWAS member states through the National Indicative Programs (NIP). However, my interest in this section is in the furthering of regional integration as an EU tool for security governance. Thus, I will focus mainly on the Regional Indicative Program (RIP) for West Africa, and on other instruments such as the African Peace Facility.

In the preceding sections I explained why the EU was concerned with West Africa security issues, the security situation of the region, and the evolution of ECOWAS peace and security architecture. As an answer to the shortcomings of ECOWAS, the EU's declared objective is "to help to bring about a significant improvement in regional governance and stability", to support and to place the organization in "a proactive position" (RIP 2008-2013). This is the first dimension of the EU action: promoting and fostering the

25This Protocol represents the normative basis for the Mechanism addressing issues of security sector governance but also more generally of the constitutional principles that should constitute the basis of the West African democracies (Ebo 2007, Madior Fall 2008).

26The ESF and ECOWARN are also situated within the African Union Peace and security architecture (APSA), a continental security structure working on the basis of the sub-regional organizations.

regionalization of security and defense policies in West Africa, and strengthening ECOWAS as the adequate answer to respond to the security threats the region is facing. However, the role of the EU in West African security governance goes beyond this mere support, the EU is also shaping this security and defense policy regionalization process – exporting its own political values and security norms to the region through different channels such as political dialogue, on-going contacts at all levels, technical assistance, etc.

EU's actions and initiatives towards the strengthening of the ECOWAS peace and security architecture

Development cooperation with ACP countries started in 1963 with the Yaoundé Convention. The aim was to allow them to maintain a preferential access to the EC market as well as to receive aid. Yaoundé was then replaced by a succession of four Lomé Conventions which broadened the scope of cooperation. Lomé I (1975-80) was already supporting regional cooperation among ACP countries even though it was restricted to the economic level²⁷, this trend was confirmed by Lomé III where the EC committed to support efforts from the ACP countries “to organize themselves into regional grouping” (Lomé III Convention, 1985-90), and which included a Title on „Regional cooperation’. The Lomé IV Convention (1990-95) went one step further by giving it “high priority” and including drug trafficking – for the first time a non-economic area of action – in the possible domains of regional cooperation that the EC would support. Not much later, a Communication from the Commission to the Council stressed that African regional organizations “have an important potential in the field of peace-building, conflict prevention, management and resolution” and that the EU should explore the possibility to engage these organizations in this kind of activities and even support them (Communication from the Commission to the Council. The EU and the issue of conflict in Africa: peace-building, conflict prevention and beyond, 1996). Indeed, since the beginning of the 1990's, the issue of conflict in Africa gained an increasing importance in the relationship between the EU and Africa, the number of EU documents on this topic testifies this new concern²⁸. There were multiple reasons to this new interest, the number of conflict in Africa was exploding during this period, African regional organizations – in particular ECOWAS – started intervening in these conflicts, and the EU was elaborating its new foreign and security policy (Faria 2004). Thus, since the crises in Liberia and Sierra Leone, the EU started mentioning quasi-systematically ECOWAS in CFSP statements concerning West Africa (Nivet 2006). However, the turning point in EU-ECOWAS relationship, and more generally in EU-ACP relations, is the replacement of Lomé IV by the Cotonou agreement in 2000, which made the relationship increasingly political and conditional, and not exclusively focused on economic and social development anymore

27 ECOWAS was actually created in 1975 by the Treaty of Lagos, it is likely that the EC example, the links with EC member states, as well as the support for regional grouping and cooperation in these EU-ACP agreements played an role in the event. Interestingly, in one of my interviews (September 14th, 2011), a Commission official from DEVCO summarized the support of the EU for regional integration in this way: “when the EU started developing its programs (...) the first thing we came up with was that there has to be regional cooperation because it’s the way we do things...you create like in the bible, you take a rib out of yourself and you create another human being. We are based on regional cooperation so they must be as well (...).” – this argument reflects the EU discourse that what has been positive and necessary for Europe should also be for other regions.

28The Council Conclusions on “Preventive Diplomacy, conflict resolution and peace-keeping in Africa” 1995; Communication from the Commission to the Council. The EU and the issue of conflicts in Africa: peace-building, conflict prevention and beyond 1996; Council Common Position concerning conflict prevention and resolution in Africa 1997; Council Common Position concerning conflict prevention, management and resolution in Africa 2001; etc.

(Keukeleire & Macnaughtan 2008)²⁹. The emphasis on political norms and values became much higher with the introduction of „essential elements’ (respect for human rights, democratic principles, rule of law) which violation can lead to the suspension of the cooperation; a political dialogue was established to discuss these norms and values, as well as other political topics such as arms trade, organized crime, migration, peace and security. It also introduced peacebuilding, conflict prevention and resolution as policy priorities that should focus on “building regional, sub-regional and national capacities (...)” (Cotonou Agreement, 2000-2020). This evolution is part of a more general turning point in the international doctrine of development which introduced politics and security in cooperation programs on the basis that security, good governance, democracy are also necessary to development or, as the EU states in its Security Strategy (2003), because “security is a precondition for development”. It is in this context that EU action towards strengthening ECOWAS’ capabilities in the field of peace and security takes place.

Support for ECOWAS capabilities in peace and security actually started with the 8th EDF (1995-2000) under Lomé IV but its amount was too low to be significant³⁰. Under the 9th EDF (2000-2007) operationalized through the 2002-2007 RIP³¹, more funding started to be provided for ECOWAS and its action in peace and governance activities: more or less 10 million euro were invested in two programs directed to ECOWAS capacities in peacebuilding and conflict prevention (technical assistance to ECOWAS Executive Secretariat, for the SALW Moratorium, to early warning, mediation and electoral observation activities, etc.)³². However, the quantitative leap only happened with the most recent 2008-2013 RIP which allocates 119 million euro to peace and security in support of three main initiatives: fight against drug trafficking (in support of ECOWAS Praia Plan of Action), migration and support to ECOWAS capacities and initiatives in peace and security reflecting the fourteen priorities of the ECOWAS Conflict Prevention Framework (strengthening the Political Affairs and Peace and Security Department within ECOWAS Commission, operationalization of the ECOWAS Standby Force, mediation, SALW, organized crime, etc.). The three initiatives are being allocated more or less 25 million euro each³³. It nevertheless has to be noted that these initiatives have either been formulated but not implemented yet, or are in the process of being formulated. One of the reasons of this delay according to DEVCO and EEAS official (interviews on September 15th, 2011) is the ECOWAS weak capacities to formulate action plans with the EU and to agree on the procedures of implementation. The other important instrument within Cotonou agreement through which the EU is influencing ECOWAS considerably – as I will argue later – is the political dialogue (art.8) conducted at many levels³⁴. The dialogue between ECOWAS and the EU was already initiated in 1998 at the level of high-ranking officials which shows the importance that ECOWAS had as an interlocutor for the EU even before this format was used for all ACP countries and regions. However, ministerial meetings twice a year only started with Cotonou in 2000. They were further supported by meetings between the

29The Cotonou agreement is based on three pillars: political dialogue, trade, and economic cooperation. It was signed in March 2000 and entered into force in 2003.

30Interview (September 15th, 2011) with an EU official working in the EU delegation in Abuja.

31The Regional Indicative Programs (RIPs) are part of the operationalization of the Cotonou agreements, along with the National Indicative Programs (NIPs).

32Interview with an EU official (September 15th, 2011) working in the EU delegation in Abuja; see also list of donors in the 2008-2013 RIP.

33Interview with DEVCO officials (September 15th, 2011).

34It also has to be emphasized that political dialogue was strengthened these past years after the revision of Cotonou in 2005. Political dialogue became more ‘systematic’ and ‘formalised’, and the recourse to art. 96 (that may lead to the non-execution of the agreement in case of a country breaching the ‘essential elements’) became stricter.

Executive Secretariat of the ECOWAS (now ECOWAS Commission) and the EU Heads of mission in Abuja; EU-ECOWAS-UNOWA dialogue; meetings at experts levels, etc. (Nivet 2006). Hence, contacts and meetings are on going and happening at all level.

However, the RIP is only allowed to finance civilian aspect of ECOWAS capacities in peace and security but finds itself most of the time at the border between civilian and more „hard’ security aspects. A more recent tool instrument is used to finance the military aspect of the support to ECOWAS, the African Peace Facility (APF); it was established in 2004 with the aim to support peacekeeping operations led by African regional organizations³⁵. It has been criticized to use EDF money for pure security actions but has been justified on the basis of the European Security Strategy stating that security is a precondition for development, and by the African ownership of these operations (Keukeleire & Macnaughtan 2008). ECOWAS has benefited several times from the APF. In 2004 it provided 12.5 million euros for ECOWAS peacekeeping operation in Côte d’Ivoire (ECOMICI); it also financed other kind of activities such as ECOWAS mediation efforts in Guinea, Niger, etc³⁶. Alongside the APF, the Instrument For Stability (IFS) could also be used to support ECOWAS in a case of crisis but its usage is restricted for urgent, short-term actions when the geographic instruments are not flexible enough to be used. The IFS replaced the Rapid Reaction Mechanism (RRM) which was mobilized for example in 2002 to support ECOWAS mediation efforts in Côte d’Ivoire (Keukeleire & Macnaughtan 2008). Thus, the EU has at his disposal a whole range of instruments targeting civilian or more hardcore military aspects, enabling it to foster and influence the security and defense regionalization process in Western Africa – and it is increasingly using them.

EU discourse on ECOWAS

The EU produces two main type of discourse towards ECOWAS. The first one, addressing ECOWAS but also at all other African regional organization, is centered on ownership, partnership and joint responsibility; it is present in every agreement and official documents on EU-Africa and EU-ECOWAS relations. ECOWAS should have the ownership on the EU development programs and should be an equal partner with the EU (Cotonou Agreement 2000-2020; RIP 2008-2013); and indeed, the joint declarations following the EU-ECOWAS ministerial meetings where both parties „agree’ together on priorities and have “exchange of views”, or EU-ECOWAS Joint Declaration on Proliferation of Small Arms and Light Weapons (2007), do give an image of partnership between the two organizations. Moreover, African regional organizations are also given by the EU discourse “the primary responsibility for prevention, management and resolution of conflicts on the Africa continent” (Council Common Position concerning Conflict Prevention, management and resolution in Africa 2005). On the one hand, the emphasis on ownership and partnership is a way to respond to the „neo-colonial’ and „paternalistic’ attitudes that were reproached to the Lomé Conventions (Lethinen 1997 in: Bonaglia, Goldstein & Petitto 2006). On the other hand, the discourse on African responsibility is also a way not to get directly involved in African conflicts while dealing with them through promoting delegation for conflict prevention, management and resolution to African regional organizations.

35It as been given 740 millions euro since 2004 and was expanded to support conflict prevention and post-conflict stabilization activities. See: http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/index_en.htm. This instrument has to be understood in the larger framework of the EU Strategy for Africa (2005) and the Africa-EU Strategic Partnership (2007) which aims, among other things, to build the APSA.

36See Annual Report – The African Peace Facility 2010.

This „delegation discourse’ is reinforced by the second main type of discourse formulated by the EU, aiming at giving legitimacy to ECOWAS and recognizing it as the key security actor in West Africa. This discourse appears evident in the declarations following the EU-ECOWAS Ministerial meetings where the EU „encourages’, „supports’, „welcomes’, „congratulates’, etc., ECOWAS integration and actions in the fields of conflict prevention and resolution (Nivet 2006). This discourse has at his basis the EU basic discourse I described in the first section of my paper arguing that regional integration is the adequate response for conflict prevention and resolution, and that security issues – mainly trans-regional – should be addressed regionally. Moreover, this „legitimacy’, „symbolic recognition’ discourse justifies the need to help building ECOWAS conflict prevention and resolution capacities. This discourse is so strong that it can go to the extent that the EU in some occasions favors the ECOWAS peace and security mandate even when it is not the more coherent way of dealing with the issue at stake, when initiatives targeting national states could be more useful - in this sense regional integration seems to be understood by the EU as an „imperative’, and does not necessarily has to be justifiable by the conditions on the ground.

However, these concepts of „partnership’ with, and „ownership’ of ECOWAS overly present in the EU discourse have their limits, as I will argue in the following part. Indeed, the gap between the two „partners’ is such that an „equal partnership’ is simply impossible between them: the EU has the money, the knowledge, massive technical and administrative capacities and strong political values and security norms that it continuously promotes in its political dialogue with ECOWAS; while ECOWAS regional integration process is still embryonic and faces capacities and financing shortages and weaknesses. Therefore, through its objective of helping to build ECOWAS conflict prevention and resolution capacities, the EU is shaping the ECOWAS security and defense regionalization process.

A shaping of the ECOWAS security and defense regionalization process by the EU?

The EU is trying to shape the ECOWAS mainly on the normative level while ECOWAS is also taking inspiration from the EU on the institutional level³⁷. However, ECOWAS is not a mere replication of the EU institutional structure such as Francis (2010), among other scholars, asserts; he argues that, in particular since the last institutional reform in January 2007 that transformed the ECOWAS Executive Secretariat into the ECOWAS Commission, it is “obvious that this transformation into a Commission is a mere African imitation of the European Union (EU) model”. Of course, ECOWAS has inspired itself from the EU institutional model and objectives: it has now a Commission, a Court of Justice, a Parliament and aims at creating a common market, setting up an economic and monetary union and becoming a supranational organization. However, it has also adapted this model to its own needs in particular concerning its peace and security mandate. Indeed, its internal security issues do not reflect EU, mainly external, security challenges; in response ECOWAS created within the Commission the office of the Commissioner for Political Affairs, Peace and Security (PAPS), with three operational departments including: Political Affairs, Early Warning and Observation Monitoring Centre (ECOWARN), and Peacekeeping. Even though these departments might not be fully operationalized yet, they still originate from a reflection of the organization on its security needs and how to address them, as well as its exchanges with the AU on the setting up of the APSA.

37Nivet (2006, p. 12) argues interestingly that, while at the beginning the EU was trying to export its institutional model, the failure of this politics led the EU to try to inspire other regional processes on a more symbolic and normative basis.

Therefore, what the EU is shaping is not the institutional structure of ECOWAS but its security and defense regionalization process – the norms and values underlying it. I will give two examples of this ‚shaping‘ before analyzing more generally the political dialogue between EU and ECOWAS, and its effect on ECOWAS security and defense regionalization process. The first example is the influence that the EU had on the elaboration of the ECOWAS Conflict Prevention Framework (ECPF). This 2008 ECPF complements the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security (1999) and goes much further in the definition and the ECOWAS approach of conflict prevention. While, the Mechanism only refers briefly to conflict prevention stating that its objective is to “strengthen cooperation in the areas of conflict prevention (...)” (1999), the ECPF gives a much more elaborated view of conflict prevention. It defines conflict and refers to its “structural factors” and “root causes”, dividing conflict prevention into “operation conflict prevention” and “structural conflict prevention” (including among others, political, institutional governance and developmental reforms), arguing for a comprehensive, integrated approach to prevention with long-term preventive initiatives, and for the mainstreaming of conflict prevention into ECOWAS policies and programs. Reading the ECPF, its similarity in terms of concepts with the Communication from the Commission on Conflict Prevention (2001) is quite striking. As I already detailed in the first section of my paper the core of this document focus on conflict prevention as aiming at the “roots causes of conflict” and “structural instability”; it recommends a “long-term and integrated approach” and the “mainstreaming” of conflict prevention in cooperation programmes. This concept of “structural stability” has first been elaborated by the EU in its 1996 Communication on Conflict Prevention and is part of what Manners calls, as I already mentioned, the EU’s value of ‚sustainable peace‘ (Manners 2006)³⁸. My argument is thus that the EU has been exporting to ECOWAS its own conception of conflict prevention as aiming at structural stability through a comprehensive integrated and long-term approach. It has done so through two main instruments: the 2002-2007 RIP, financing a program which aimed to “assist ECOWAS to fulfill its mandate in the area of peace-building and conflict prevention, particularly to develop a Conflict Prevention strategy for the region”³⁹; and through political dialogue. In a statement to the United Nations Security Council (UNSC), the EU Presidency claimed that:

“The challenge for ECOWAS remains to integrate short-term crisis management activities into a long term preventive strategy. The EU will intensify its political dialogue with ECOWAS and its member states, in particular on policies geared to address the structural root causes of conflict in a sustainable manner (...)” (EU Presidency Statement to the UNSC – Cross Border issues in West Africa, February 25th, 2005).

This statement testifies that the elaboration of a conflict prevention strategy by ECOWAS was an important point for the EU in its agenda for the region. And indeed, this point was regularly brought up during the ECOWAS-EU Ministerial meetings⁴⁰. So the EU used its technical assistance to the ECOWAS Executive Secretariat, as well as socialization to its own conflict prevention norm through political dialogue, to shape the ECOWAS ECPF⁴¹ and more generally ECOWAS approach to conflict prevention. The ECPF is thus in

³⁸ ‘Structural conflict prevention’ is now part of an international corpus on conflict prevention promoted by the UN and other international organizations. However, the EU was a key actor in its development and it is the most influential representative of this approach in West Africa.

³⁹See the list of donors and programs in the RIP 2008-2013.

⁴⁰2nd EU-ECOWAS Ministerial meeting (2001); 4th ECOWAS-EU Meeting at Ministerial Level (2003); etc.

⁴¹For Checkel (2007, pp. 5-6) the outcome of socialization is “sustained compliance based on the internalization of new norms (...); this adoption is sustained over time and is quite independent from a particular structure of material incentives or sanctions”.

great part the result of the on-going dialogue between the EU and ECOWAS and of the EU's promotion of its conflict prevention norm.

A second example of the EU's action in shaping ECOWAS security norms is its influence on the transformation of the ECOWAS Moratorium on SALW into a binding convention. The EU has developed its own specific approach on SALW based on Joint Actions⁴² and on an EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (2006); and it made of this transformation a priority on its agenda for West Africa. Indeed, the EU diagnosed SALW as one of the major problems in West Africa, destabilizing regional stability, fuelling violent conflict, organized crime and terrorism, with all the consequences it entails for its own security⁴³. The EU used three instruments at its disposal to further this transformation: support of the ECOWAS National Small Arms Commission⁴⁴ through the 2002-2007 RIP; direct financial and technical assistance given by the Council to the ECOWAS Executive Secretariat with the purpose to "set up the Light Weapons Unit within the ECOWAS Technical Secretariat and convert the Moratorium into a Convention on small arms and light weapons"⁴⁵. Thirdly, EU-ECOWAS political dialogue⁴⁶ and EU political declarations pressuring ECOWAS to put this issue high on its agenda. Thus, in a declaration at the UNSC, the EU Presidency states that:

"Whereas the EU welcomes the recent renewal for three years of the Moratorium on the importation, exportation and manufacture of small arms in West Africa, we encourage the efforts of the ECOWAS Small Arms Control Program to transform the Moratorium into a legally binding instrument." (EU Presidency Statement to the UNSC – Cross Border issues in West Africa, February 25th 2005).

In this case the EU has been using its knowledge (an already well developed SALW approach) and its important technical competences compared to ECOWAS administrative and technical weaknesses⁴⁷ to push its own agenda. Indeed, the final 2006 ECOWAS Convention responds to EU's priorities as exposed in its 2002 Joint Action and its 2006 Strategy: creation of national and regional inventories, regional confidence-building measures and exchanges of information, strengthening of border controls, provisions on collection, storage and destruction, etc. Therefore, Nivet argues that the technical assistance given to

42Council Joint Action on the European Union's contribution to combating the destabilizing accumulation of small arms and light weapons (1999); Council Joint Action on the European Union's contribution to combating the destabilizing accumulation of small arms and light weapons and repealing Join Action 1999/34/CFSP (2002).

43See EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (2006): "SALW contribute to a worsening of terrorism and organized crime, and are a major factor in triggering and spreading conflicts, as well as in the collapse of State structures."

44These National Commissions on SALW are implementing the ECOWAS Moratorium (now Convention) at the national level of ECOWAS member states.

45Council Decision implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons (2004).

467th EU-ECOWAS Ministerial Troika Meeting (2005); 4th ECOWAS-EU Ministerial Troika Meeting (2003); etc.

47According to an EU official working in the EU Delegation in Abuja (September 15th, 2011), ECOWAS has not operational capacities. He pointed to the fact that the job of 'project manager' did not exist within the organization; there were officials who took political decisions but nobody to manage the programs.

the ECOWAS executive Secretariat does not correspond with the „ownership’ principle because it aims at directly influencing the shaping of the future ECOWAS Convention on SALW (Nivet 2006). Nevertheless, when I argue that the EU has been implementing its own agenda through the shaping of the ECOWAS Convention I do not imply that SALW are not considered as a pressing security issue in West Africa, among others, but that it was an issue high on the EU agenda and, hence, resulted into one of the most advanced security program of ECOWAS.

Thus, political dialogue was one of the main instruments used to shape the ECPF and the ECOWAS Convention on SALW. More generally, my argument is that the EU uses political dialogue to socialize ECOWAS to its political values, and promote its security norms and priorities; moreover, by exchanging views, pressuring ECOWAS to take common positions on stability and security issues in West Africa, the EU is fostering in ECOWAS the habit of consultation between member states – thereby supporting the integration process. The European Consensus on Development stresses the promotion of EU’s norms as an important dimension of political dialogue:

“Political dialogue is an important way in which to further development objectives. In the framework of the political dialogue (...), the respect for good governance, human rights, democratic principles and the rule of law will be regularly assessed with a view to forming a shared understanding and identifying supporting measures. This dialogue has an important preventive dimension and aims to ensure these principles are upheld.” (European Consensus on Development 2005)

Therefore the EU is socializing ECOWAS to its political values, making sure, through the political dialogue consultations on the stability and security situation of ECOWAS member states, that ECOWAS will react and take position each time one of the „essential’ principles is in danger to be breached. This has been recently the case for Niger in October 2009 when President Tandja tried to extend its non-renewable mandate⁴⁸, as well as for Guinea after the violent repression of a political demonstration in September 2009⁴⁹. The objective of the EU here is to support stability in West Africa, which means supporting the democratization process of West African countries and the respect for human right. The assumption is that the EU values and norms should be privileged as they are the recipe for peace and stability, and they should be exported to West Africa because the region needs EU’s assistance⁵⁰, as well as because the EU’s own security depends also of West Africa stability. Even though these political values are not proper to the EU, it is still the most influential exporter of these values to Western Africa, as ECOWAS does not maintain with any other external actor an on-going and structured political dialogue such as this one. As I demonstrated previously, the EU is also pushing its security norms (such as conflict prevention and its approach on the fight against SALW), as well as its security priorities into the ECOWAS security agenda: drug trafficking, terrorism, organized crime, SALW, migration⁵¹. The EU is, in this way, participating to the

4816th EU-ECOWAS Ministerial Troika Meeting (2009) stating that “Both parties agreed that the action of the authorities are in grave violation of democratic principles”.

4916th EU-ECOWAS Ministerial Troika Meeting (2009) where the “the two Parties strongly condemned the violent repression of the peaceful political demonstration on 28 December 2009 in Conakry by the security forces under the command of the CNDD (...).”

⁵⁰ This relates to the more general ‘solidarity’ discourse of the EU, stemming from its position as a model to follow because it has achieved peace and prosperity, it should therefore help poor and conflictual countries to reach the same peace and prosperity. 5112th ECOWAS-EU Ministerial Troika Meeting (2007); 13th ECOWAS-EU Ministerial Troika Meeting (2008); 14th ECOWAS-EU Ministerial Troika Meeting (2008); 17th ECOWAS-EU Ministerial Meeting (2010); etc.

construction of the ECOWAS security agenda. These issues are existing security issues in West Africa, however they would not have been prioritized as much without the EU-ECOWAS political dialogue⁵². Nivet argues that all these issues “mentioned in ECOWAS declarations and decisions, internal or intended for EU members and agencies” are “a reproduction of the discourse of the northern agenda”, and that there is an “obvious trend among West African partners of articulating European-like normative discourses at regional level, without turning them into functional policies” (Nivet 2006). I would disagree with him in the sense that this process is more complex than what Nivet implies: through socialization taking place within political dialogue, ECOWAS is assimilating EU political values and security norms; however ECOWAS is not a passive recipient, it is adapting these values and norms to its own context and made a strategic choice in this sense to attract funding from external actors and gain international legitimacy and credibility⁵³. The fact that this choice is partly strategic does not impede socialization to take place and these values and norms to be internalized over a period of time⁵⁴ - it is a social learning process. One proof of that would be the increasing amount of actions that ECOWAS is taking to monitor the stability of the region and prevent a breach of the democratic principle in one of its member states to take place: mainly through mediation actions (in Côte d'Ivoire a number of time since 2001, Togo in 2005, Guinea in 2007, Niger in 2009)⁵⁵ and electoral observation missions (in Togo and Côte d'Ivoire in 2010, Niger in 2011)⁵⁶.

On the other hand, the political dialogue fosters the ECOWAS security and defense regionalization process through the on-going consultations and joint monitoring of the stability and security situation of the region. In order to be able to dialogue with the EU on these issues, ECOWAS has to prepare beforehand through consultation between the member states in order to elaborate common positions on these topics. Hence, dialogue with the EU is participating to the creation of a consultation and cooperation habit between ECOWAS member states. The EU is also pressuring them to take common stances on sensitive issues such as in the recent Côte d'Ivoire case⁵⁷. The EEAS and DEVCO officials I interviewed (on September 13th and 15th, 2011) insisted on the role that the EU had in keeping ECOWAS together politically during the crisis; eventually ECOWAS took a very strong common position on the refusal of President Gbagbo to transfer its power to the winner of the elections, Mr. Alassane Ouattara. Indeed, ECOWAS went

52An EU official in the EU Delegation in Abuja (interview on September 15th, 2011) argued with me that the identification of security challenges was the same for the EU and ECOWAS, the challenges being so evident that there was no problem with the definition of security issues between the two regional organizations; however, he then briefly admitted that there were some sensitive points and that the EU was pushing forward some priorities that were not necessarily ECOWAS own priorities.

⁵³This was the opinion of an EEAS official working on West Africa (September 13th, 2011), he told me that ECOWAS made a strategic choice in adopting these ‘universal’ political values which is why the organization has an important credibility today with its peace and security mandate.

54I agree in this with Finnemore and Sikkink (1998, pp. 902-903) arguing that adopting new norms is similar to ‘peer pressure’ among countries; three possible motivations exist for responding to such ‘peer pressure’: legitimation, conformity and esteem.

5511th ECOWAS-EU Ministerial Troika Meeting, April 2007; 7th EU-ECOWAS Ministerial Troika Meeting, May 2005; 16th EU-ECOWAS Ministerial Troika Meeting, November 2009.

56See ECOWAS press releases: ECOWAS observers to monitor the second round of the 2011 presidential election in Niger 2011; ECOWAS deploys an observation mission to monitor the 2010 presidential election in Togo 2010; ‘ECOWAS observers to monitor the 2010 presidential election in Côte d'Ivoire 2010.

57Dr Ibn Chambas, former President of the ECOWAS Commission, acknowledged (September 14th, 2011) that political dialogue with the EU has many time facilitated the work of ECOWAS on these sensitive issues, when the democratic and the rule of law principles are being breached.

until the point to declare that if President Gbagbo refused to respond to its demand “the Community would be left with no alternative but to take other measures, including the use of legitimate force, to achieve the goals of the Ivorian people” (Extraordinary Session of the Authority of Heads of State and Government on Côte d’Ivoire, Abuja 2010). This kind of declaration, envisaging the use of force to reestablish democracy, is actually the first of its kind for ECOWAS.

Throughout my analysis it is possible to see the limits of the ‘equal partnership’ and ‘ownership’ concepts present in the EU discourse. First, it is difficult to talk about an equal partnership while – as I already noted – the gap between the two organizations is such as this one in terms of financial, administrative, technical and political capacities. As I demonstrated in this section, the administrative and technical gap between them has enabled the EU to shape some of ECOWAS main security documents. This reality is also reflected through the fact that the political dialogue is only concerned with the stability and security situation in ECOWAS member states and through the use of art. 96 of the Cotonou agreement – entailing the launching of a consultation procedure if one of the ‘essential elements’ is being breached in an ECOWAS country, and the interruption of cooperation in case there is no return to ‘normalcy’⁵⁸.

The concept of ‘ownership’ also has its limits. Firstly, there is no definition of local ownership so it is difficult to understand what this concept entails: is it ownership on the elaboration of policies and programs and/or ownership on their implementation (Bendix & Stanley 2008)? There is no agreement between the EU and ECOWAS on what ‘ownership’ should mean. Secondly, while the EU is trying to apply ‘local ownership’, the tension between this concept and the operational and institutional weakness of ECOWAS compared to EU standards, accountability and transparency demands, makes it difficult for the EU to translate it into reality. Security also plays a role here, an EU official in the EU Delegation in Abuja (September 15th, 2011) was arguing to me that it was hard to find a balance between the capacities of the regional organization to implement programs and the role of external actors in these programs. He told me,

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“you have to combine two things: you have a problem and you can afford more or less time. Drug or organized crime, these activities don’t wait. You have to build capacities, reinforce the mandate of the ECOWAS Commission while tackling the problems before another states collapse. That’s where the problem is.”

Furthermore, another official from DEVCO argued with me (September, 15th 2011) that they would like to develop the ownership of the organization and therefore enter into ‘contribution agreements’, meaning that the EU would give money alongside a general program and some objectives while the organization would be handling alone the implementation of the program. However, in the ECOWAS case this was not possible because the organization did not pass the EU audit concluding that ECOWAS administrative capacities were still too weak for that. This type of discourse – justifying the non-application or semi-application of the local ownership concept with the weakness of ECOWAS – appeared in all my interviews with EU officials working on the implementation of regional programs in West Africa. Hence, the EU discourse suffers tensions and contradictions between the official ‘local ownership’ discourse and the difficulty to translate this discourse into practice. Thirdly, it might be interesting to reexamine the concept of ‘local ownership’

⁵⁸Some discontent stemming from this procedure can be felt in some ECOWAS member states. For instance, Ambassador Ba of Mali to the EU (interview on September 14th, 2011) argued to me that the ‘partnership’ they have with the EU in the framework of the political dialogue was only working in an unilateral way as the country is convened to give explanation and the EU is monitoring the whole process by itself without the involvement of the region. His feeling was that political dialogue was not working in a satisfactory way.

within the framework of the „structural foreign policy’ concept. As I mentioned already, the objective of a structural foreign policy would be to influence, shape and create structures that are sustainable in the long term, even when external support has disappeared (Keukeleire & Macnaughtan 2008). In this case, the concept of „local ownership’ would be irrelevant because the EU is partly shaping, constructing in relation with ECOWAS, through dialogue, exchanges and pressures, ECOWAS security agenda, norms and programs. The different elements I examined in this section seem to point in that direction.

Conclusion

To conclude, three basic discourses open the way for the EU engagement in security governance. Firstly, the EU’s security discourse pointing to the EU vulnerability in a globalized world: danger does not come from inside anymore but from the outside through security externalities coming from other parts of the world (terrorism, drug trafficking, migration, etc.). The EU has thus to protect itself through security governance. The second basic discourse concerns itself with the „solidarity’ principle describing the EU as having a mission: now that it has achieved peace and stability after centuries of wars and divisions, it should help others to reach the same prosperity. This discourse present the EU as a model which can help other countries because it has the means and tools available to do so. Thirdly, the EU’s involvement in security governance is posited as a way to assert itself as a global player, capable of acting on „hard’ issues such as security, beyond „soft’ issues such as trade and cooperation. However, the EU discourses underline a main concern of the EU for its security and stability; the 'solidarity' principle is also connected to security as involvement in security governance in unstable regions is seen as a kind of 'enlightened self-interest' by the EU officials (Duffield 2005).

The promotion of regional integration is one of the main tools for the EU security governance along with the promotion of multilateralism and international law, and the launching of missions. I argued that it is part of the EU’s identity and that it comes from the securitization of integration in Europe, seen as the essential element for its survival, peace and prosperity. The region is therefore for the EU an adequate level to respond to security challenges conceptualized in its discourse as trans-regional. Hence, the EU promotes the same logic in other part of the world as the recipe – almost necessary – for peace and stability inside, and more generally in international relations. I also noted that this idea could be contested as not every interstate community is built on democracy, the respect of human rights and free market such as the EU, nor are they all open towards the exterior.

Following this logic, the EU is promoting regional integration in West Africa and in particular the regionalization of its security and defense policy through ECOWAS. More than fostering, the EU is also shaping this process by exporting to the region its political values and security norms, and thus participating in the construction/elaboration of ECOWAS’ security agenda, norms and programs. West Africa is a particularly favorable context for the EU to do so because of the cultural and historical proximity, the strong links between its member states and ECOWAS member states. What has also enabled the EU to influence so greatly ECOWAS is the huge inequality between the two regions in terms of financial, technical and administrative capabilities, but also in terms of „normative strength’ – the EU is a normative power, its norms constituting its foreign policy, while ECOWAS is slowly integrating the values and norms that the international community is diffusing. As for the concepts of partnership and ownership, while useful devices to try to correct the mistakes of past development and cooperation programs and reorient them towards a policy more respectful of the agency and interests of the 'partners', their applicability is limited in this process of 'shaping'. Moreover, the security discourse hinders their practice by putting an efficiency pressure on the EU programs which have to be carried out without giving full ownership to ECOWAS because of its institutional weakness. On the other hand, the high accountability and transparency

standards required by the EU also limit the possible ‚local ownership‘ of the ECOWAS in the programs funded by the EU. It might better be seen as an aspiration than as a reality. However, this tension in the discourse can be perceived negatively by the ‚partners‘ who can doubt the EU discourse and point to its incoherence.

This problematization and deconstruction of the EU’s discourse and practices does not try to show that the identity and discourse of the EU in itself is problematic, this will depend on the political context and effects of these practices. The content of the norms the EU is projecting aims at a more peaceful and just world, respectful of human rights, and in this sense can be seen as positive (Diez 2005). Moreover, as I stressed earlier, this does not mean that the other actor – ECOWAS in this case – is constrained to adopt EU norms, it has a room of maneuver and respond to and/or assimilate EU’s discourse and value to advance its own political and security agenda. Finally, as Diez (2005) emphasizes,

“the projection of European norms and values (...) need to be subjected to continuous deconstruction through the exposition of contradictions within the discourse, and between the discourse and other practices. This would by no means undermine, but rather rescue, normative power from becoming a self-righteous, messianic project that claims to know what Europe is and what other should be like.”

The next step would be to compare the support of the EU to other regional organizations in the security field: are the same discourse applied? Is the EU able to shape this process in other regional organizations? Does it use the same strategies than for ECOWAS? Is major inequality between the organizations a condition for that? What is the strategy of the EU when the region is not based on democratic principle, rule of law and respect of human rights? Another set of questions concern the agency of ECOWAS in this process. I commented that ECOWAS is not a passive recipient in its interaction with the EU. It would be necessary to examine more thoroughly how it is adapting to and modifying the EU's norms and values, as well as how the EU discourse is influencing its own discourse.

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The EU Aviation ETS caught between Kyoto and Chicago: Unilateral Legal Entrepreneurship in the Multilateral Governance System

Coraline Goron

Abstract

The entry into force, on January 1st, 2012, of the European Union Directive 2008/101/EC extending the European Emission Trading System to domestic and international civil aviation has taken the dispute regarding its legitimacy to unprecedented heights. The choice of the EU legislator to include foreign air carriers and their CO₂ emissions that occurred beyond EU airspace infuriated third countries, while the fact that the directive applies the same treatment to all airline operators whatever their nationality met vivid criticism from developing countries, in particular China and India.

This paper investigates the reasons why the environmental objective pursued by the EU Aviation ETS does not seem sufficient to render its unilateral adoption acceptable to the international community, despite staging multilateral negotiations and despite the flourishing national transplants of the ETS system in other jurisdictions. Thereby it provides a preliminary assessment of what the current row implies for the global governance of climate change. Devoting particular attention to the positions of the EU and China in this dispute, it argues that the opposition to EU endeavour finds its roots in the normative frictions between the climate change regime and the international aviation regime, while the lack of process legitimacy of EU unilateralism provoked third countries' claims to the infringement of their national sovereignty. Thus, it concludes that in the current international system, the harmonization of regimes' normative goals and principles must result from a political choice, the absence of which can effectively frustrate the achievement of multilateral cooperation goals. Moreover, in such context, the unilateral imposition of an alternative path involving the other regime members against their consent, to palliate multilateral norm-making, is likely to meet increasingly strong opposition from an increasing number of powerful countries.

GEM PhD student ULB (from 01-09-2012)

The EU Aviation ETS Caught between Kyoto and Chicago: Unilateral Legal Entrepreneurship in the Multilateral Governance System¹

Coraline Goron

Introduction

The entry into force, on January 1st, 2012, of the European Union Directive 2008/101/EC extending the European Emission Trading System to domestic and international civil aviation has taken the dispute between the European Union and major powers, including the US, China, Russia and India, regarding the legitimacy of this regional legislation to unprecedented heights. In essence, the ETS Aviation Directive imposes on all air carriers, irrespective of their nationality, landing or departing from a European airport, to surrender a certain number of 'allowances' corresponding to the quantity of CO₂ emissions released by their planes during their journey to or from the EU. Because part of the allowances will have to be purchased by the airline operators, they represent a cost, which has been denounced as an 'unlawful carbon tax'. Furthermore, the choice of the EU legislator to include CO₂ emissions that occurred beyond EU airspace in the calculation of the amount of allowances to be submitted infuriated third countries, while the fact that the directive applies the same treatment to all airline operators whatever their nationality met vivid criticism from developing countries, in particular China and India. Interestingly, whereas the 'battle' is "likely to be resolved by diplomatic parleys rather than in the courtroom"², arguments on all sides have been framed in legal terms and courts of law are being brought to the fore as new international actors in the process. In a judgment issued on 21 December 2011³, the Court of Justice of the European Union concluded to the compatibility of the European directive with international law. Yet, 29 non-EU countries signed a "Moscow Declaration" on 22 February 2012, which, on the contrary, severely condemned the European Act as an unacceptable violation of international customary law -in particular the principle of territorial sovereignty- and of a number of legal principles which have been developed in diverse international legal systems or "regimes"⁴, notably the 1944 Chicago Convention on International Aviation (Chicago Convention), the 1992 UN Framework Convention on Climate Change (UNFCCC) and its 1997 Kyoto Protocol, as well as WTO law. The Declaration threatened the EU of further

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¹ This research paper benefited greatly from the support and inputs from Professor Elisa Baroncini from the University of Bologna, as well as several Chinese Scholars who accepted to devote some of their time to answering my questions, in particular Prof Cao Mingde, Director of the Climate Change and Natural Resources Law Research Center at CUPL, Dr. Li Bin, Associate Director of the Institute of Aviation Law at Beihang University School of Law and Mr. Philip Boxell whom I met in CUPL. I would also like to thank Huang Yue from CAAC research institute, Li Lina from Greenhub and Li Shuo from Greenpeace China for the rich discussions we had on the EU Aviation case and EU-China environmental, climate and energy policies. They allowed me to widen my perspective and reflectively construct my approach to this issue as developed in this paper.

² Havel, Bryan F, Mulligan, John Q, "The Triumph of Politics: Reflections on the Judgment of the Court of Justice of the European Union Validating the Inclusion of Non-EU Airlines in the Emissions Trading Scheme", *Air and Space Law*, vol 37, no 1, (2012), pp 3-33

³ ECJ (Grand Chamber), Case C-366/10, "Air Transport Association of America and others", 21 December 2011

⁴ Stephen Krasner was first to coin the term "international regimes" that he defines as "institutions possessing norms, decision rules, and procedures which facilitate a convergence of expectations." in his founding article: Krasner, Stephen D. 1982. "Structural Causes and Regime Consequences: Regimes as Intervening Variables." *International Organization* 36/2 (Spring)

legal actions and various retaliatory measures⁵. Hence, the US Congress⁶ and the Chinese government⁷ have already taken steps to prohibit their domestic airline operators from complying with EU law, creating a direct bilateral confrontation between these national legal orders.

From an environmental perspective, such principled and virulent opposition seems out of keeping with the high stakes taken in climate change matters, since the EU ETS Directive is the first piece of legislation aiming at reducing emissions from international aviation ever adopted. Moreover, climate change mitigation has become the most symbolic expression of the wider principle of sustainable development. It is not only a major goal of the UNFCCC and the *raison d'être* of the Kyoto Protocol, but it has also been endorsed as a paramount development imperative by the EU, China⁸ and an overwhelming majority of third countries and international organizations. Thus, this paper tries to provide an answer to the following question: why the environmental objective pursued by the EU Aviation ETS has not been able to convince the international community to tolerate its unilateral adoption, despite staging multilateral negotiations and despite the flourishing national transplants of the ETS system in other jurisdictions? Consequently, this paper will also give a preliminary assessment of what the current row implies for the global governance of climate change.

It is argued that the opposition to EU Directive finds its roots in the frictions between legal and other structural norms at the international level. The cross-sectorial nature of climate change regulation implies that it impacts several separate regimes concomitantly; thereby, it has revealed important horizontal normative incompatibilities between them. In the present case, the pillar norm of Common but Differentiated Responsibilities and Respective Capabilities (CBDR) in the climate change regime⁹, clashes with the norm of non-discrimination, which is a cornerstone of the international aviation regime¹⁰. Similarly, the Chicago Convention's embedded tradition of tax exoneration arguably puts undue limitations on climate action by individual members to achieve their environmental goals in the climate regime. The question of how to accommodate these divergences is still hotly debated in the academic world¹¹ and no systematic answer is available to the diplomats charged with balancing them in the multilateral context.

Furthermore, although not yet definitely settled, the dispute generated by the EU Aviation ETS dispute has already revealed important limits to unilateral normative action in a global system structured on expectations of multilateral norm-making. In particular, the way the Kyoto Protocol delegated its 'multilateral norm-making' mandate to ICAO seems to impose a political limit on the actions that its members can take to fulfil their climate change mitigation commitments. Hence, a large part of the

⁵ Joint Declaration of the Moscow Meeting on Inclusion of International Civil Aviation in the EU-ETS", ICAO, 22 February 2012, Moscow, available at http://www.greenaironline.com/photos/Moscow_Declaration.pdf, consulted on 8-07-2012

⁶ "European Union Emissions Trading Scheme Prohibition Act of 2011", HR2594, adopted in first session by the 12th Session of the United States Congress

⁷ 中国政府禁止境内航空公司参与欧盟排放交易 ("The Chinese Government bans Domestic Airlines from participating in the EU Emissions Trading System"), Communication by CAAC, 2, June 2012, available at: http://www.caac.gov.cn/A1/201202/t20120206_45737.html, consulted on 8-07-2012

⁸ See for the EU side, European Commission, "Winning the Battle against Global Climate Change", COM(2005) 35 final, Brussels, 9 February 2005; for China see China State Council White Paper, "China's Policies and Actions for Addressing Climate Change" (CPAACC), 2008

⁹ Sands, Philippe, "The United Nations Framework Convention on Climate Change", *Review of European Community and International Environmental Law*, N°1, 1992, pp 270-277

¹⁰ Chicago Convention on International Aviation, Article 11 "application of air regulations" and article 15(1)

¹¹ See Fisher-Lescano, Andreas, Teubner, Gunther, "Regime Collision: the vain search for legal unity in the fragmentation of global law", *Michigan Journal of International Law*, Vol 25:999, Summer 2004, pp 999-1045; International Law Commission, Report to the UN General Assembly finalized by Martti Koskenniemi, "Fragmentation of International Law: Difficulties Arising from the diversification and expansion of international law", Geneva, Summer 2006

international opposition to EU's endeavour seems rooted in the fear of setting a precedent encouraging EU's normative unilateralism to prosper and 'spill over' to other fields, in particular maritime transportation and carbon taxation, whenever multilateral negotiations cannot keep pace with Europe's global governance ambitions¹². In particular, the principled opposition by China to a legislation whose overall economic impact is relatively limited¹³ seems primarily motivated by the will to curb EU's self confidence that it can palliate the absence of multilateral solutions with its own determination of the path to be followed. Indeed, in the face of a normative imbroglio at the international level, any unilateral attempt to impose one's own priorities or values is doomed to be perceived as illegitimate. In this regard, a linkage between national sovereignty and multilateralism underlines this dispute, whereby otherwise unacceptable encroachments to national sovereignty can only be legitimated through multilaterally agreed solutions.

Chapter I presents the dispute's background of procrastinating multilateral negotiations and its main actors, with a particular emphasis on China's reaction most dramatic and multifaceted response. Chapter II focuses on the horizontal conflict of norms which have continuously impeded progress in the multilateral frameworks, while putting a contradictory burden of international obligations and curtailing action by pro active individual members such as the EU. Subsequently, Chapter III explains why the EU's unilateral approach is perceived as disruptive and illegitimate in the context of multilateral governance. Finally, Chapter IV offers some concluding remarks as to the significance of these developments for the future decentralized global governance of climate change and the limits on 'EU Leadership by example in this field of 'high politics'¹⁴.

Chapter I: The European Aviation Directive as substitute for multilateral action and its detractors

4

1) Sketching the background: International aviation GHG emissions left unregulated by staging negotiations in the UNFCCC and ICAO

Since 1992, global governance of climate change has developed within the multilateral framework established by the United Nations Framework Convention on Climate Change¹⁵. The Kyoto Protocol to the Convention, which was adopted by the Conference of the Parties (COPs) in 1997, for the first time assigned binding targets for the reduction of Greenhouse gases (GHG) emissions by industrialized countries (Annex I) within a specific commitment period (2008-2012). The Protocol entered into force after the EU secured participation from Russia but without the United States, in February 2005¹⁶. In December 2010, the Cancun Summit reached a global political agreement that in order to "prevent dangerous anthropogenic interference with the climate system" global temperature increase should be kept below 2 degrees Celsius¹⁷. And yet, according to the estimates published by the International Energy Agency, global CO₂

¹² Cheng Shuaihua, « Is Europe Breaking the Law », *China Dialogue*, November 4, 2011

¹³ Faber, Jasper, Brinke, Linda, "The Inclusion of Aviation in the EU Emissions Trading System, An Economic and Environmental Assessment", *ICTSD*, Issue Paper No. 5, September 2011, p 21

¹⁴ Oberthur, Sebastian, "EU Leadership on Climate Change: Living up to the Challenge"

¹⁵ United Nations Framework Convention on Climate Change, New York, 9 May 1992

¹⁶ Oberthur, Sebastian, Pallemmaerts, Marc, "The EU's Internal and External Climate Policies : An Historical Overview", in Oberthur, Sebastian, Pallemmaerts, Marc (eds.), *The New Climate Policies of the European Union*, Brussels, VUB Press Brussels University Press, 2010, pp 27-63

¹⁷ Cancun Agreements, COP16-CMP6 Decisions, UNFCCC Conference, Cancun, Mexico December 11, 2010

emissions reached a “record high” in 2010¹⁸”, and last April, the Agency’s Executive Director Maria Van Der Hoeven voiced concerns that “on current form, the world is on track for warming of 6 C by the end of the century¹⁹”. Thus, when measured according to an ecological criterion, the “effectiveness” record of the international climate governance appears shockingly poor²⁰.

Moreover, the Kyoto Protocol’s decade of dragged negotiations between 1995 and 2005 failed to achieve consensus on the inclusion of GHG emissions from international transportation, -international aviation and maritime transport-. The political and methodological difficulties for the allocation of such emissions and persistent disagreement on how to apply the CBDR principle have prevented such inclusion until now²¹. As a result, on the contrary with domestic aviation emissions, which are counted as part of Annex 1 countries emission reduction commitments, “international aviation emissions are essentially unregulated at the international level²²”. However, article 2.2 of the Kyoto Protocol foresees a multilaterally agreed solution by mandating the parties to negotiate through the specialized UN body dedicated to this sector, namely the International Civil Aviation Organization (ICAO). The binding force of this provision is one of the major points in the EU Aviation ETS dispute (see chapter III). Although climate change mitigation goals have been duly integrated by ICAO²³ in the international aviation regime built upon the 1944 Chicago Convention, progress under these auspices have been “exceedingly slow²⁴”, at least until very recently. And yet, pressures to address emissions from aviation have mounted in unison with worries about the impact of this sector’s booming growth. Indeed, whereas estimates endorsed by ICAO state that, at present, GHG emissions from aviation represent only about 2% of global CO2 emissions and maximum 3% of the global anthropogenic GHG emissions²⁵, the projected exponential growth of the aviation sector activities, in particular in emerging economies such as China, represents an acknowledged challenge for climate change mitigation²⁶.

According to their mandate under the Kyoto Protocol, ICAO members have not remained entirely passive though and the 37th General Assembly in the fall of 2010 did succeed in adopting an aspirational

¹⁸International Energy Agency, “Prospect of limiting the global increase in temperature to 2°C is getting bleaker”, 30 May 2011

¹⁹ Maria Van Der Hoeven, reported in [Fiona Harvey](#) and Damian Carrington, “Governments failing to avert Catastrophic Climate Change, IEA warns”, [The Guardian](#), Wednesday 25 April 2012. The 6 C increase scenario is the worst scenario envisaged by the IPCC report and would yield catastrophic ecological and economic consequences across the globe.

²⁰ The UNEP “Emissions Gap Report” authoritatively concluded that even if the emissions reductions included in the pledges of the Copenhagen Accord were delivered, they would fulfil only 60% of the reductions advocated the scientists to keep global temperatures rise at 2°C. See UNEP, “The Emissions Gap Report: Are the Copenhagen Accord Pledges Sufficient to Limit Global Warming to 2°C or 1.5°C?”, November 2010

²¹ Kati Kulovesi reports that the inclusion of GHG emissions from international aviation and bunker fuels has been put on the negotiation table of the post-Kyoto framework by the EU and other developed countries (namely Norway and Australia) as well as the group of least developed countries, but that the issue remains controversial and although several proposals have been put forward and discussed in UNFCCC institutions, no course of action has been adopted yet. See Kulovesi, Kati, “Make your own special song, even if nobody else sings along: International Aviation Emissions and the EU Emissions Trading Scheme”, *Climate Law*, Vol 2, No4, 2011, *SSRN Paper No1*, 2011

²² Scott Joanne, Rajamani, Lavanya, “EU Climate Change Unilateralism, International Aviation in the European Emissions Trading Scheme”, *European Journal of International Law*, Vol 23, No2, 2012, *SSRN Paper 1* November 2011

²³ ICAO has created a Committee on Aviation and Environmental Protection (CAEP) which has regularly convened since. Moreover, all recent ICAO Assembly resolutions have addressed the issue CO2 emissions from international aviation

²⁴ Scott Joanne, Rajamani, Lavanya, op cit, p 6

²⁵ Gossling, Stefan, Upham, Paul, “Introduction, Aviation and Climate Change in Context”, in Gossling, Stefan, Upham, Paul (eds) *Climate Change and Aviation: Issues, Challenges and Solutions*, 2009, p 4; the same estimates were reiterated by ICAO Resolution A37-19 of the ICAO 37th General Assembly from 28 September 2010 to 8 October 2010

²⁶ ICAO submission to Rio+20, “Inputs and Contributions of the International Civil Aviation Organization to the United Nations Conference on Sustainable Development”, 26 October 2011, p 4

goal of reaching an average annual fuel-efficiency improvement of 2% and capping Aviation emissions at 2020 levels²⁷. However, such weak target unarguably lacks ambition and in any event falls short of EU goal to limit Aviation emissions to 2005 levels²⁸. Remarkably, similarly to the divergences that have plagued the negotiations of the 'Post-Kyoto' climate change regime since the adoption of the Bali Roadmap of 2007, moving global cooperation forward in ICAO hinges upon resolving distributive issues that continuously divide the international community. However, this problem stands out even more sharply in the case of aviation because of the fact that the aviation regime, contrary to the climate regime, was built upon the principle of non-discrimination²⁹.

2) The EU Aviation Directive in context

Against the background of multilateral disarray described above, and meaningful both its binding commitments under the Kyoto Protocol³⁰ and of its ambition to take on a leadership role in global climate action³¹, the European Union in 2009 adopted a landmark "EU Climate and Energy Package"³². This legislative breakthrough was aimed at implementing a self-imposed binding mitigation target known as "20-20 by 2020" -standing for a reduction of 20% of GHGs, an increase in the share of renewable energy from 8.5% to 20% and improving energy efficiency by 20% by the year 2020³³.

Among the regulatory instruments of the package, the EU Emissions Trading Scheme (ETS) Directive has been presented as a cornerstone of EU's climate policy, both internally and externally³⁴. Following an evaluation of the first period (2005-2007), the ETS system initially established by Directive 2003/87/EC and in force since 2005 has been supplemented by a Directive extending the ETS to the domain of Aviation adopted in 2008³⁵, slightly earlier than the 'package' Directive 2009/29/EC of 23 April 2009, which refined and extended the ETS's 'cap and trade' system to more than 10 000 undertakings across a wider range of industrial sectors³⁶. Under the aviation directive, in order to create scarcity the cap (total amount of allowances available) allocated to the aviation industry was set at 97% (in 2012) and 95% (from 2013) of the 'historical benchmark of aviation emissions (calculated between 2004 and 2006). However, concerns of the impact of the scheme on the industry's competitiveness led the European legislator to decide that 82% of the cap would be '*grandfathered*', thus allocated for free to each airline operators on the basis of their reported ton-kilometre data. A margin of 3% has been reserved to grant more emission rights to airlines entering the scheme after 2012 or developing very fast. The 15% left must be purchased at auction from

²⁷ ICAO Assembly Resolution A37-19 (2010), paragraphs 4-5

²⁸ See the written testimony delivered to the US Senate by Mr Jos Delbeke, Director General, Directorate General Climate Action in the European Commission, Delbeke, Jos, 6 June 2012

²⁹ Article 11 and 15(1) Chicago Convention

³⁰ Under the Kyoto Protocol of 1997, the EU-15 countries accepted the most ambitious GHG emissions reduction target among developed nations, with a total regional target of 8% reduction from baseline year 1990, redistributed among themselves through a "burden sharing agreement"

³¹ Oberthur, Sebastian, Roche Kelly, Claire, "The EU Leadership in International Climate Change Policy; Achievements and Challenges", (2008), *The International Spectator*, pp 42-43

³² For a comprehensive exegesis of the Package, see Kulovesi, Kati, Morgera, Elisa, Munoz, Miquel, "Environmental Integration and Multifaceted International Dimension of EU Law: Unpacking the EU's 2009 Climate and Energy Package", *Common Market Law Review*, 2011, Vol 48, pp 829-891

³³ Presidency Conclusions of the Brussels European Council, 7-8 March 2007, 7224/1/07

³⁴ For a recent reaffirmation, see Jos Delbeke, Op Cit

³⁵ Directive 2008/101/EC of the European Parliament and the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emissions allowance trading within the Community

³⁶ The sectors covered are listed in Annex I to the amended Directive 2003/87/EC and include, next to aviation: power production from combustion of fuels, production of iron and steel, production of cement, production of timber, production of hydrogen and synthesis gas, notably for transport of GHG by pipelines and CCS

the member states or on the integrated EU Carbon market³⁷. Hence, the whole amended text of the ETS directive forms an integrated system and an integrated market.

Notwithstanding this, there is one particular aspect of the aviation directive that creates a world of difference with the main bulk of the ETS scheme: its material scope of application. Contrary to the provisions related to stationary installations in Directive 2009/29, the Aviation ETS Directive does not confine itself to domestic flights or airline companies registered in the EU. Instead, it requires all air carriers, irrespective of the origin or destination of the flight and irrespective of their nationality, landing or departing from an aerodrome located in the territory of the member states, to surrender one allowance per ton of CO₂ emitted over the entire flight³⁸. The inclusion of foreign airlines illustrates the principle of non-discrimination in international aviation law and EU law. Yet, it has been challenged by developing countries, in particular China, as contrary to the CBDR principle. The inclusion of CO₂ emissions that occurred over beyond EU territory has been justified with regard to the environmental efficiency of the scheme. Nevertheless, this choice has infuriated third countries' airlines and governments, who have argued that it amounts to having the EU regulating and extracting revenue from activities taking place over the high seas and in their own domestic air space, in violation of their territorial sovereignty³⁹ (chapter III).

Before coming to this, it is useful to give an account of the form and dimension that the opposition to the EU endeavour has taken. Not only it enlightens the concrete obstacles to the exercise of normative unilateralism that currently exist in the international system, but it also allows to speculate on its consequences for the effectiveness of the emerging global governance system.

3) International reactions and escalating bilateral row between the EU and China

The adoption of the EU Aviation ETS Directive has met radical political opposition from the international community. On September 29-30, 26 non-EU member states of the ICAO convened at New Delhi, India, and issued a Joint Declaration⁴⁰ which condemned the EU ETS as illegal under international law and called the approach of the EU under the directive "inacceptable". This Declaration was then formally adopted by majority by the ICAO Council at a meeting in Montreal on 2 November 2011⁴¹, which "urged the EU and its Member States to refrain from including flights by non-EU carriers to/ from an airport in the territory of an EU Member State in its emissions trading system". Meanwhile, the United States Air Transport of America Association and several other American airlines supported by the US government have brought a lawsuit against the validity of the Directive in front of British national courts, which has then been referred for preliminary ruling to the European Court of Justice of the European Union (ECJ). However, after the judgment of the ECJ in December 2011 (hereafter 'the ATA case'⁴²) declared the ETS directive compatible with international law and the latter entered into force on 1st January 2012,

³⁷ Typically airline operators can purchase emission allowances from other industries on the EU carbon market; even though this is a "one way street", as allowances allocated to the aviation sector cannot be purchased by other industries to fulfill their quotas under Directive 2009/29/EC. This specific treatment of Aviation allowances was conceived in order to prevent interferences with the member states' commitments under the Kyoto Protocol, which excludes emissions from international aviation. See recital 27 of the preamble of Directive 2008/101/EC

³⁸ Article 3d Directive 2008/101/EC

³⁹ Young, Nancy N, Vice President of Environmental Affairs, Air Transport Association of America (ATA) submission before the US Congress, "The European Union Trading Scheme, a Violation of International Law", 27 July 2011

⁴⁰ See the Press Release from the Indian Ministry of Civil Aviation, International Meeting of ICAO Council and Non-EU Member States on Inclusion of Aviation in EU ETS, available at <http://pib.nic.in/newsite/erelease.aspx?relid=76388>

⁴¹ ICAO 194th Council meeting, see ICAO working paper C-WP/13790 of 17 October 2011 entitled "Inclusion of International Civil Aviation in the European Union Trading Scheme (EU ETS) and its Impact".

⁴² ECJ, Case C-366/10, 21 December 2011

opponents to the scheme adopted a yet stronger stance at a meeting in Moscow held on 21-22 February 2012. There, 29 non-EU ICAO member states issued a second Joint Declaration threatening with the EU with legal actions in different forums, -notably in the ICAO and the WTO-, and diverse retaliatory measures⁴³.

Among the countries opposing the directive, China has taken the most advanced steps, escalating the dispute to the highest diplomatic levels. As expressed by Cai Haibo, deputy secretary-general of the China Air Transport Association (CATA), the Chinese reaction has been “walking on two legs⁴⁴”. The first ‘leg’ has been to work through legal means in order to see the directive declared illegal (a classic way of handling trade disputes with the EU, in particular with regard to trade defence instruments like anti-dumping and anti-subsidies proceedings, which are based on EU laws) in front of German national courts⁴⁵. Yet, this course of action seems less attractive since the outcome ATA case, according to which both the Chicago Convention and article 2.2 of the Kyoto Protocol⁴⁶ have been found out of reach of the invocability by individuals for the review of EU Acts. Although this finding has been heavily criticized, it results that Chinese airlines could hardly rely on the Kyoto Protocol to claim the violation of the broad and vague CBDR principle⁴⁷. Furthermore, contrary to the “Open Skies Agreement” between the EU and the US, which eventually offered an acceptable basis for most of the legal review of the directive, China only has concluded bilateral agreements with some EU member states. Yet, according to the jurisprudence of the ECJ in the case *Kadi and Interkanto*⁴⁸, bilateral agreements concluded between the member states and third countries cannot serve as ground for the review of EU acts. Whatever the shortcomings of this jurisprudence in terms of interactions between the EU and international law, it results that challenging the EU directive on this basis in front of EU courts is doomed to failure.

In front of these difficulties, the Chinese diplomatic efforts have reported to the legislative side in order to see the Aviation Directive amended or implemented in a manner that would accommodate its special needs as a developing country. Hence, the Civil Aviation Administration of China (CAAC) found the costs of participating in the scheme exceedingly high for developing countries aviation industry, based on calculations that paying the EU ‘carbon tax’ would cost China’s aviation industry 790 million Yuan (US\$124 million) in 2012 and up to 3.7 billion Yuan (\$580 million) in 2020⁴⁹. The EU, on the contrary, has repeatedly emphasized that the costs associated with the implementation of the ETS would be minimal and easily passed on to the consumers, -around 17,5 Yuan RMB per flight from Beijing to Brussels⁵⁰-. In particular,

⁴³ Joint Declaration of the Moscow Meeting on the Inclusion of International Aviation in the EU-ETS, February 22, 2012

⁴⁴ Cai Haibo, quoted in Watts, Jonathan, “Chinese Airlines refuse to Pay EU Carbon Tax”, *The Guardian Online*, 4 January 2012

⁴⁵ Germany is the ‘Administering Country’ for most Chinese airlines, in particular ‘Air China’, under directive 2008/101/EC. See Commission Regulation (EU) No 100/2012 of 3 February 2012 on the list of aircraft operators performing an aviation activity listed in Annex I to Directive 2003/87/EC and specifying the administering member state for each aircraft operator

⁴⁶ ECJ, Case C-366/10, paragraphs 71 and 78, respectively

⁴⁷ ECJ, Case C-366/10, paragraphs 52-54: for International law to be invoked by individuals in proceedings aiming at the review of EU acts, the EU (1) must be bound by the international rules, (2) the nature and broad logic of the latter do not preclude it and (3) their content must “unconditional and sufficiently precise”. The Court found that even though the EU was a party to the Kyoto Protocol and therefore bound by it, article 2.2 of the Kyoto Protocol did not meet the criteria of precision and unconditionally. In the light of the tremendous highly disputed scope of the CBDR principle, it seems very unlikely that it would meet such thresholds of unconditionally and precision.

⁴⁸ Case C-308/06, *The Queen, on the application of International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport* [2008] ECR I-4057; *Joined Cases C-402/05 P and C-415/05 P, Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council and Commission* [2008]; for an analysis of the cases, see Van Rossem, Jan Willem, “Interaction between EU Law and International Law in the Light of *Interkanto* and *Kadi*: The Dilemma of Norms binding the Member States but not the Community”, *Netherlands Yearbook of International Law* 2009, CEER working paper 2009/4

⁴⁹ LanLan, “China’s Airline Talks with EU Stall”, *China Daily online*, 23 July 2012

⁵⁰ Delegation of the European Union to China, “Aviation in the EU Emissions Trading System Information Note”

China has pushed for a modification of the specific rules concerning the ‘grandfathering’ of emissions allowances to each individual airline operator. Indeed, thus far the EU has failed to convince China that the 3% margin reserved for new market entrants was sufficient and that its nascent but fast growing air service activities in the EU market would not be more adversely affected by the scheme than ‘already taped’ EU and US air carriers. Another proposal has been that the EU could adopt differentiated delays in the implementation of the directive so as to give time for developing countries’ aviation industry to ‘catch up’ and give consideration to the CBDR principle. Finally, experts have looked at the so-called ‘flexibility clauses’ of the Directive, which leaves room for amendment of its provisions if “equivalent measures” were adopted by third countries⁵¹. In this regard, one of the possibilities might be for the EU to consider China’s newly created “civil aviation development fund”, which lists among its purposes “civil aviation’s energy conservation and emission reduction⁵²” as an equivalent measure. Another optimistic view has been to look forward to the development of China’s own ETS. However, the latter is still in infancy and is not expected to include the aviation sector before long⁵³. In any case, although in practice bilateral negotiations are likely to play a critical role, ultimately what is to be considered “equivalent” according to the directive, is to be determined by the EU unilaterally⁵⁴. This is yet another frustration for third countries which falls back into claims of sovereignty breach.

Indeed, the second leg of China’s reaction, which may have taken precedence over the first one as measure as the dispute escalated, has expressed a hard diplomatic line based on the rhetoric of national sovereignty and calling on the EU to step back. This discourse, also expressed through China’s leading role in the above-mentioned ICAO international meetings, has been supported by the use of ‘power-politics’ instruments, such as the reported Chinese government’s withholding of up to \$12 billion USD new Airbus deliveries to China Airlines in retaliation to the ETS⁵⁵. More importantly, this foreign policy stance has also been backed by the adoption of a ‘ban’, published by the CAAC (中国民用航空局 CAAC) on 6 February 2012, prohibiting Chinese airlines from participating in the ETS and from raising fares or passenger charges to recover the cost of taking part in it⁵⁶. Accordingly, a coalition of Chinese airlines companies led by *Air China* have refused to submit their CO2 emissions data to the European Commission by the deadline prescribed in the directive (16 June 2012) and exposed themselves to the pecuniary sanction of 100 EUR per ton of CO2 emissions not covered surrendered allowances and eventually an operating ban for EU airspace⁵⁷. However, as enforcement would likely lead to dangerous trade retaliations from China, the EU has diplomatically ‘postponed’ the deadline in the hope that a solution can be found before 30 April 2013, date by which EU member states will start enforcing the scheme.

In such context, as Advocate General Kokott put forward in her Opinion delivered on 6 October 2011⁵⁸, there is not yet any objective ordering rule in international public law to solve the conflict. While it has been suggested that Chinese airlines could request EU national courts to put aside the application of EU

⁵¹ Article 25a Directive 2008/101

⁵² Article 23 (3) Notice of China Ministry of Finance on Issuing Interim Measures for the Collection, Use and Management of the Civil Aviation Development Fund [Effective], 17 March 2012

⁵³ See, among other, Wang, Tao, “China’s Carbon Market Challenge”, *China Dialogue*, 21 May 2012

⁵⁴ See article 25(a).1 Directive 2008/101/EC

⁵⁵ Bloomberg, “EADS Says A330 Boost Is Hostage to China Views on Carbon Tax,” Bloomberg.com, March 8, 2012

⁵⁶ CAAC, notice “中国政府禁止境内航空公司参与欧盟排放交易体系” (“The Chinese government bans domestic airlines from participating in the EU emissions Trading Scheme”), published in Chinese on CAAC website http://www.caac.gov.cn/a1/201202/t20120206_45737.html and reported in English by the state official news agency Xinhua at http://news.xinhuanet.com/english/china/2012-02/06/c_131394306.htm

⁵⁷ See articles 15.3 and 15.5 Directive 2008/101/EC

⁵⁸ Kokott, Juliane, Opinion of the Advocate General, 6 October 2011, ECJ, Case C-366/10, paragraph 158

law under the excuse that it would force them to breach their own national law⁵⁹, the success of such claim is unlikely. This is even more so because the legal nature of the Chinese ‘ban’ remains fairly unclear. Whereas the CAAC claims to have received the approval from the State Council for imposing it, the latter has not taken any steps to adopt a formal regulation or present a text to the National People’s Congress Standing Committee. In addition, like the US “European Union Emissions Trading Scheme Prohibition Act of 2011” passed by the Congress on 24 October 2012 and now pending for adoption in front of the Senate, the Chinese ‘ban’ does not foresee any penalties for the Chinese airlines in case of non compliance. This is likely to be interpreted by EU courts as giving precedence to the application of EU law.

However, ramifications of this dispute have found their way through the drafting of the upcoming first climate change law of China. Indeed, the first academic draft produced by the Chinese Academy of Social Sciences foresees that the Chinese government “shall take countermeasures” when other countries or international organizations adopt trade protection measures or unilateral carbon taxes on Chinese airliners and ships⁶⁰. Although this draft has no legal or even political value until it is formally endorsed by the Chinese government⁶¹, it still offers powerful evidence of the impact of the EU Aviation ETS case for future international cooperation on climate change.

Whether bilaterally or multilaterally, the opposition of China to the directive has brought to the fore challenging arguments grounded in its principled position as a developing country. Arguments based on CBDR must be devoted particular attention, if only because they have largely contributed to the deadlocks in the UNFCCC and ICAO.

Chapter II: From Kyoto to Chicago: Horizontal conflicts of regimes’ norms

The EU unilateral move has brought to light the normative clashes which have prevented the ICAO from fulfilling its mandate under article 2.2 of the Kyoto Protocol⁶², in particular because the issue of environmental fuel taxation and CBDR -two main avenues of the climate regime- seem to clash with the Chicago Convention’s embedded principles of tax exoneration and non-discrimination.

1) Horizontal clashes of value-norms between the climate and International Aviation regimes: climate mitigation versus fuel taxation

Under the UNFCCC, countries have almost universally made commitments to combat climate change. According to the Stern Review⁶³, it has been widely recognized that ‘carbon pricing’ through market-based mechanisms, namely ‘carbon taxation’ and emissions trading, were the most cost-efficient climate mitigation instruments and thus also the most suitable for a ‘sustainable’ climate policy. On the other side, the Chicago Convention, adopted in the aftermath of World War II in 1944, unsurprisingly does not mention any environmental objective. Despite this, the ICAO has progressively assumed a role in the

⁵⁹ This concept is known as ‘comparative impairment’ the judge should apply the law that would be more impaired by non-application, see William A Baxter, ‘Choice of Law and the Federal System’ (1963) 16 *Stanford Law Review* 1

⁶⁰ Act on Addressing Climate Change (Draft Proposal), Chapter 8 “International Cooperation on Addressing Climate Change”, article 101 entitled “International sanctions”

⁶¹ In the present case, a formal proposal should be put forward by the National Development and Reform Commission (NDRC) which has been managing China’s climate Change and energy policies and consequently has been charged by the State Council of drafting the first Climate Change law of China.

⁶² Article 2.2 Kyoto Protocol provides: “The parties included in Annex I shall pursue limitations or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the ICAO and the International Maritime Organization (IMO), respectively”

⁶³ Sir Stern Nicholas, “Stern Review: The Economics of Climate Change”, Executive Summary, Cambridge University Press, 30 October 2006, p 18

development of environmental standards for aviation, which has recently undergone a rapid institutionalization, first with the creation of a Committee of Aviation Environmental Protection (CAEP) and the subsequent formation of a Group on International Aviation and Climate Change (GIACC) in 2007. Furthermore, ICAO's most recent Assembly Resolution A37-19 of October 2010 endorsed emissions limitation objectives and re-affirmed its ambition to develop a global framework for market based measures (MBMs).

Nevertheless, the primary goal of ICAO under the Chicago Convention remains the development and liberalization of international aviation. This goal is supported by two types of key provisions: the strict limitations on taxation affecting international aviation and the principle of non-discrimination. With growing concerns over the global environment, the aviation favourable tax treatment has come under the fires of environmentalists, who have denounced entrenched economic and industrial interests. As a result, arguably, "there is no more controversial issue that divides governments"⁶⁴ in ICAO than 'carbon pricing'. In the face of mounting pressure, the ICAO Council in 1996 adopted a "Resolution on Environmental Taxes and Charges"⁶⁵, which reluctantly 'noted' the desire of some members to impose environmental levies, but failed to provide strong guidance as to their application besides respect for the principle of non-discrimination and proportionality to the environmental objectives pursued in order to preserve the industry's competitiveness. However, this *soft law* resolution can hardly provide solid ground for an exception to the unequivocal prohibitions of charges enshrined in article 15 and 24(a) of the Chicago Convention. From then on it is not surprising that, CO2 emissions being intrinsically related to fuel consumption, "the concept of emissions charges and the extent to which such charges can be applied by States to foreign carriers has been the single most disputed issue at ICAO's meetings"⁶⁶, as reflected in the language of Resolutions A35-5 and A36-22⁶⁷.

The status of 'Emissions Trading Schemes' in ICAO has proved even more ambiguous. Resolutions A35-5 and A36-22 both distinguished emissions trading from charges, but the most recent Resolution A37-19, on the contrary, adopted a single approach to all market based measures (MBMs). Moreover, it is highly disputed whether Resolution A37-19 overturned Resolution A36-22, which '*urged*' states not to implement an emissions trading system on third States' aircrafts, "except on the basis of mutual agreement"⁶⁸. Thus, it seems that absent a clear and binding multilateral system addressing emissions from aviation, the relationship between MBMs and the tax provisions of the Chicago convention is bound to remain controversial. From this it can be inferred that whereas ICAO, in order to withhold its leadership in the regulation of international aviation⁶⁹, has attempted to incorporate environmental objectives, it has also internalized the originally *inter-regime* normative contradictions between the necessity of carbon pricing for climate mitigation purposes and embedded charge exoneration privileges in the field of international aviation.

⁶⁴ Havel, Bryan F, Mulligan, John Q, *Loc Cit*, p 27

⁶⁵ ICAO Council "Resolution on Environmental Charges and Taxes", adopted at the 16th meeting of its 149th Session on 9 December 1996

⁶⁶ COM(2005) 459 final, *Op Cit*, p 9

⁶⁷ In both resolutions, ICAO council recognized that "existing ICAO guidance was not sufficient to implement GHG emissions charges internationally", yet "*urged* contracting states to refrain from imposing them unilaterally"

⁶⁸ All EU member states made a reservation on this resolution. See Reservations made to Assembly Resolutions A36-22 Consolidated statement of continuing ICAO policies and practices related to environmental protection) – Appendix L only (Market-based measures, including emissions trading), Extracts of A36 Min, P/9 (minutes of the 9th plenary meeting)

⁶⁹ Struxal, Stephen, "The ICAO Assembly Resolution on International Aviation and Climate Change: An Historic Agreement, a Breakthrough Deal, and the Cancun Effect", *Air and Space Law*, 36, no 3m 2011, pp 217-242

These tax prohibitions in the Chicago Convention have provided the one of the most serious challenge to the EU Directive. However, in the ATA case, the ECJ rejected the claim of American airlines that the ETS was an unlawful tax. On the contrary, it upheld the arguments of the European Commission and the Advocate General that the ETS was neither a tax nor a charge⁷⁰, and thus was immune from the prohibitions of international aviation law. And yet, from the arguments put forward by the industry and in the literature⁷¹, notably that “by obliging air carriers to buy allowances, Directive 2008/101 affects the markets in the same way as taxes, levies, duties and charges”, such determination is far from clear cut. On the other hand, the Court avoided taking side in the ‘value debate’ on whether the tax prohibitions of the Chicago Convention should be allowed derogation for the environmental purpose of reducing CO2 emissions⁷².

The resulting perception in the international community that the ECJ was bought to domestic political and industrial interests reinforced all-sided opposition instead of offering a settlement of the normative struggle. Hence, headlines lambasting EU’s ‘illegal tax’ have not rarefied since.

2) Horizontal clashes of distributive norms between the climate and International Aviation regimes: Non-discrimination versus CBDR

The principle of Common but Differentiated Responsibilities and Respective Capacities (CBDR) is undeniably the backbone “generalized principle of conduct⁷³” of the climate change regime. Its most notorious expression is found in the Kyoto Protocol’s formal division between, on the one hand, industrialised countries (Annex I) subjected to binding CO2 emissions reductions target and, on the other hand, developing countries (Annex II). It further underpins the parties’ bargaining procedures in the UNFCCC (two tracks approach)⁷⁴ and alliances and has also become the reference scale along which what is “equitable” and thus acceptable in terms of regime’s obligations is discussed at the multilateral level.

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However, the lingering negotiations of the post-Kyoto climate regime have also revealed deep divergences as to what this principle entails in terms of attributing concrete responsibilities. China has been the loudest advocate of the relevance of this principle ever since it got involved in the UNFCCC process⁷⁵ and domestically, a large consensus exists among government, academics and the civil society as to its primary importance⁷⁶. Yet, the concept is nowhere defined with precision, which leaves room for different interpretations among different sections of the Chinese society, the academic world and, last but

⁷⁰ ECJ, Case C-366/10, paragraphs 142-147

⁷¹ Even before adoption of Directive 2008/101, the EU legal service had raised doubts that “the auctioning of allocations could be understood as conflicting with articles 15 and 24 of the Convention”, see Opinion of the legal Service inter-institutional file 2006/0304(COD), 1 October 2007; see also Schwarz, “including Aviation into the European Union’s Emissions Trading Scheme, *European Environmental Law Review* (2007), pp 10-13; See also the charge by Havel and Macmullan denouncing the reasoning of the Court as a “semantic dodge”, p 30; as well as Mayer, Benoit, Case Law Court of Justice, *Common market Review*, 2012, vol 49, pp 1113-1140

⁷² Mayer, Benoit, op cit, p 1137-1139

⁷³ Sands, Philippe, op cit, pp 270-277

⁷⁴ Negotiations under the UNFCCC are formally divided into two “tracks”, -the Conference of the Parties to the Convention (COP) and its adjacent ad-hoc working group (AWG-LCA) on the one hand, and, since 2005, the Conference of the Parties to the Kyoto Protocol (CMP) and its working group (AWG-KP) focused on Annex I members’ obligations under the Protocol-

⁷⁵ The CBDR principle already featured predominantly on China’s first submission to the Rio Earth Summit of 1992. For a review, see Bo, Yan, Chen Zhimin, “The European Union, China and the Climate Change”, in de Sales Marques, Jose Luis, Seidelmann, Reimund, Vasilache, Andreas (eds.), *Asia and Europe, Dynamics of Inter and Intra-Regional Dialogues*, Baden, NomosVerlagsgesellschaft, 2009, pp 415-436

⁷⁶ This was stressed by all interviewees from the academic word and the civil society. Notably Prof. Cao Mingde and Prof Li Bin and Ms Li Lina from Greenhub.

not least, between the different governmental departments involved⁷⁷. The EU also endorsed the CBDR principle in the climate regime. However, it has put into question the ‘two tracks’ approach and favoured a more flexible differentiation between countries in the post-Kyoto area, a move from the current *status quo* which has been continuously opposed by China and other BASIC⁷⁸ emerging countries.

With regards to CO₂ emissions from international aviation, article 2.2 of the Kyoto protocol expressly addresses ‘Annex I’ countries to work through ICAO to reduce their international aviation emissions. Such ‘transplant’ of the CBDR principle has provoked a direct clash with the International aviation regime’s own traditional distributive principle of non-discrimination based on nationality⁷⁹. Hence, reconciling the two principles has been acknowledged by ICAO as one of its biggest challenge⁸⁰.

From this, industrialized countries, including the EU, have argued in favour of a ‘regime isolation’ approach confining the CBDR principle to the climate regime⁸¹. On the other side, developing countries led by China have repeatedly insisted on the continued validity of the CBDR principle⁸². The result of this confrontation is remarkably visible in the wording of ICAO resolutions A36-22 and A37-19 which refer to both principles successively, without ordering or prioritizing them⁸³. Arguably though, A37-19 featured a net shift in favour of the developing countries ‘inclusive’ argument by putting large emphasis on the ‘special needs of developing countries. Nevertheless, this evolution should not mask the fact that this remains a major bone of contention in the current negotiations⁸⁴. Just like climate protection goals, the transplant of the CBDR principle into the international aviation regime has not resulted in an automatic re-ordering of the regime’s normative goals. On the contrary, it emphasized their pre-existing incompatibilities by blocking the decision-making system of the organization.

This normative struggle at the multilateral level has nourished the claims against the EU Aviation ETS directive, which has been accused of violating *both* principles. Directive 2008/101 is premised upon the equal treatment to “all flights arriving and departing from Community aerodromes. Nevertheless, the Directive has still been denounced for its alleged discriminatory impacts⁸⁵ because of the calculation

⁷⁷ Notably the NDRC, the SEPA, the ministry of foreign affairs and, according to the issue, the ministry of taxation, the ministry of aviation, etc, may have different visions. The NDRC and the ministry of foreign affairs are arguably more conservative

⁷⁸ The BASIC group is a negotiating ‘alliance’ in the UNFCCC Framework composed of four emerging economies: Brazil, South Africa, India and China

⁷⁹ Article 11 Chicago convention and article 15(1) applies it to charges.

⁸⁰ ICAO submission to Rio+20, “Inputs and Contributions of the International Civil Aviation Organization to the United Nations Conference on Sustainable Development”, 26 October 2011

⁸¹ This can be inferred from Jos Delbeke insistence on the principle of non-discrimination as basic requirement in ICAO negotiations, see Delbeke, Jos, Director General, Directorate General Climate Action in the European Commission, written testimony delivered to the US Senate, 6 June 2012

⁸² Greenair, “Concerns over CBDR fail to halt important ICAO council agreement to move forward on evaluating market-based measures”, *Greenair online*, 13 March 2012

⁸³ ICAO council resolution A36-22 in several places, but notably the third recital of Appendix L on “Market-Based Measures, including Emissions Trading” and Resolution A37-19, recital 10 and 11

⁸⁴ Greenair, *Loc Cit*

⁸⁵ See the Moscow Joint Declaration of 22 February 2012, whose first and tenth recitals consider that “the inclusion of International Aviation in the EU-ETS leads to serious market distortions and unfair competition”. In this regard, it should be noted that even if, according to the ECJ in the ATA case, the EU is not bound by the Chicago Convention’s principle of non-discrimination by the fact that it is not a party to it, it is nevertheless bound by it through its as a fundamental principle of both the WTO and EU’s own legal order. See Opinion of the Advocate General Kokott, paragraphs 185-201

method for the amount of allowances due, which is a function of the length of the flight. Such argument could found an action in front of the WTO⁸⁶.

More importantly for this discussion, though, is the accusation of China and India on behalf of developing countries that the directive violates the CBDR principle. They have argued that by imposing identical obligations on developing countries airlines and developed countries airlines, directive 2008/101 failed to recognize EU's duty under the Kyoto Protocol to "take the lead in combating climate change"; failed to "acknowledge developed countries aviation industry historic contribution to GHG emissions" and also put an unfair burden on developing countries aviation industry that still lags behind in aircraft manufacturing and technology⁸⁷. Yet, for the EU, restricting the scope of the directive to developed countries airlines would be a violation of the principle of non-discrimination. In addition, the European Commission hinted that the principle of CBDR was not relevant for the EU directive as the CBDR principle would apply only to relations *between states*, whereas Directive 2008/101 mainly addresses private market actors⁸⁸. Indirectly, if reported in the context of the ICAO described above, this could mean that in the elaboration by the ICAO of a global system for MBMs addressing businesses, only the latter should be taken into account, while concerns for CBDR would take other forms (such as provisions for financial support and technology transfers or in determining national caps for emissions). Needless to say, such position is not shared by a majority of developing countries, and notably China⁸⁹. Moreover, Rajamani and Scott have put forward a convincing counter argument that distinguishing between, on the one hand, developing states that would fully benefit from the CBDR and, on the other hand, developing countries airlines that would be put on equal footing with developed countries' airlines, is artificial and unduly restricts its scope of application⁹⁰.

Taking that the EU Directive thus had to respect both the non-discrimination and CBDR principles simultaneously, inevitably it also had to strike its own 'balance' to accommodate them. Indeed, the EU has also maintained that Directive 2008/101 did comply with the CBDR principle⁹¹. First, the European Commission considered that, by taking the first step in tackling emissions from aviation, directive 2008/101 was in itself an expression of the EU "taking the lead" in combatting climate change. Secondly, it maintained that whereas the scheme was *in itself* non-discriminatory, differentiation in favour of developing countries occurred in the impact of the directive, first through its *de minimis rule*⁹², which *de facto* excludes a large bulk of developing countries from the scope of the ETS and second, because its "compliance costs would naturally be borne by Annex I carriers as they generally have a higher market share on the routes covered⁹³". Notwithstanding the challengeable accuracy of these findings⁹⁴, it remains

⁸⁶ For a comprehensive analysis of the compatibility of Directive 2008/101 with WTO law, including both a review of the GATS and GATT, Meltzer, Joshua, "Climate Change and Trade – the EU Aviation Directive and the WTO", *Journal of International Economic Law*, Vol 15(1), February 2012, pp 111-156

⁸⁷ See, among other Press reports, Chee Yoke Ling, "CBDR must guide work on International Transport Emissions, say Several Developing Countries", *Climate Justice Now*, Report from Durban Negotiations, 29 November 2011; China's Statement of Reservation on Resolution A37-19: http://legacy.icao.int/icao/en/assembl/A37/Docs/10_reservations_en.pdf

⁸⁸ See Arthur Runge-Metzer, European Commission DG Climate Action, "Aviation and Emissions Trading" presentation to the ICAO Council briefing, 29 September 2011.

⁸⁹ Greenair, "Concerns over CBDR fail to halt important ICAO council agreement to move forward on evaluating market-based measures", *Greenair online*, 13 March 2012

⁹⁰ Rajamani, Lavanya, Scott, Joanne, Op cit, p 15-18

⁹¹ European Commission, COM (2006) 818 final; SEC(2006)1684, "Impact Assessment of the Inclusion of Aviation Activities in the Scheme for Greenhouse Gases Emission Allowance Trading within the Community", accompanying document to the Proposal of Directive 2008/101 to the European Parliament and the Council, p 52

⁹² Directive 2003/87/EC amended text, Annex I paragraph j

⁹³ European Commission, COM (2006) 818 final; SEC(2006)1684, Op cit, p 52

that “evidence of incidentally disparate impact is not enough to demonstrate compatibility with the CBDR principle⁹⁵”. Furthermore, the ‘flexibility clause’ of the EU Aviation ETS Directive makes the revision of the ETS dependent on third states adopting “measures having an environmental effect *at least equivalent* to that of the directive⁹⁶”, which seems to require similar efforts from developing and developed countries in a manner “out of keeping⁹⁷” with the CBDR principle. Here also, the European directive unilaterally decided its own, subjective determination of the appropriate balance between the normative principles of CBDR and non-discrimination.

3) Inter-regime normative fragmentation and the space for unilateral determination

The phenomenon of ‘fragmentation of international law’ from the emergence of specialized and relatively autonomous regimes has already been widely discussed in the literature and anxieties about its risks for the stability of the international system triggered the establishment, in 2002, of a special Study Group in the International Law Commission of the United Nations⁹⁸. In this framework, an important issue has revolved around how to resolve these “problems of contradictions between individual decisions, rule collisions, doctrinal inconsistency and conflict between different legal principles⁹⁹”. The legal research has identified two classical sets of rules for solving conflicts of norms. The ‘conflict of norms’ rules which have traditionally served the hierarchic ordering *within* legal system on the one hand (the classic hierarchy of norms enshrined in most domestic constitutional laws), and private international law rules of ‘conflict of laws’ developed to determine the applicable law in case of interaction *between* legal systems¹⁰⁰, on the other. The legal doctrine, which tends to favour a view of international law as one coherent system, has tended to look for hierarchical solutions to all normative conflicts at the international level. However, recent academic discussions nourished by International Relations’ systemic anarchy theories have found “reductionist” this attempt to “reproduce the ideal of legal hierarchies of the nation-state”¹⁰¹, as it failed to understand the political roots of inter-regimes’ normative conflicts, grounded not only on a plurality of policies, but also a plurality of policy-makers¹⁰². Michaels and Joost have suggested that the logic of “conflict of laws” rules could be better suited for solving conflicts between specialized treaty regimes¹⁰³, even though it would require significant adaptation to be applied in an *inter-regime* instead of an *inter-state* context. Interestingly, these authors have hinted that functional, institutional or procedural connecting factors could be worked out, pointing toward one branch of international law rather than the other.

However, this discussion has not yet extended to analysing the impact of unresolved horizontal inter-regime normative conflicts on the regime members, required as they are to comply concomitantly with both (vertical dimension). Perhaps the reason why this aspect has been overlooked resides in the

⁹⁴ Notably by China, see chapter I

⁹⁵ Rajamani, Lavanya, Scott, Joanne, *Loc cit*, p 24

⁹⁶ See Directive 2008/101, recital 17. It should be noticed that the language has been changed in article 25a, which removes the “equivalence test” and cast further doubts concerning the criteria that will be used as basis by the commission for this test.

⁹⁷ Rajamani, Lavanya, Scott, Joanne, *Loc cit*, p 21

⁹⁸ ILC Report, “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion International Law”. Report of the Study Group of the International Law Commission. Finalized by Martti Koskenniemi’ UN Doc A/CN.4/L.682 (13 April 2006)

⁹⁹ Fisher-Lescano, Andreas, Teubner, Gunther, *Loc cit*, p 1002

¹⁰⁰ Michaels, Ralf, Pauwelyn, Joost, “Conflict of Norms or Conflict of Laws?: Different Techniques in the Fragmentation of International Law”

¹⁰¹ Fisher-Lescano, Andreas, Teubner, Gunther, *Loc cit*, p 1002

¹⁰² *Ibid*, p 1003

¹⁰³ Michaels, Ralf, Pauwelyn, Joost, *Loc cit*, p 28

presumption that States are the ultimate responsible for ensuring consistency among the different international obligations they contract. Yet, this does not help solving conflicts that exist and impact outside national territories.

This is precisely the vertical twist that has been revealed by the EU Aviation ETS dispute. This case not only has brought to light two of these kinds of inter-regime normative conflicts in the field of climate change, it has also proved that the efforts of ICAO to integrate 'foreign' norms from the climate regime have not led to an automatic ordering, and instead emphasised their incompatibilities. The institutional decision-making deadlock that has resulted suggests that, indeed, expectations of an intuitive normative hierarchic ordering were presumptuous. In addition, whereas it is remarkable that article 2.2 of the Kyoto Protocol embodied an institutional connection between the two regimes, it has certainly fallen short of providing a direction as to how to accommodate their respective normative goals.

Secondly, the EU Aviation ETS is the first 'high profile' concrete example showing the political consequences of normative conflicts in the global context of interactions between multiple legal orders, *vertically* (domestic and regional versus global) as well as *horizontally* (between regimes). The unilateral move of the EU in the field of international aviation amounted to imposing its own 'balancing act' between the norms involved, which arguably favours, on the one hand, environmental objectives over international aviation freedom and, on the other hand, non-discrimination over CBDR. Ultimately though, the right of the EU for making such determination in its territory is an expression of its regulatory sovereignty and third states cannot interfere with it, as it was emphasized by the Advocate General Kokott in the ATA case. In fact, should the EU have chosen to apply the Directive only to its domestic aviation industry, it would likely have received the applause of the international community and the above-mentioned unilateral normative determinations would probably have gone unnoticed. Instead, the fact that the Directive includes foreign airlines and 'international' emissions has transformed EU domestic legislation into a provocative and illegitimate unilateral international act.

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Chapter III: The procedural flaw, true hurdle for EU Aviation ETS directive's legitimacy: process legitimacy and multilateralism

What infuriated the international community is the perception that the EU has overlooked third countries' regulatory sovereign rights. This claim has covered two different but related aspects. The first aspect has related to the extraterritorial application of the directive and the second to the fact that it pre-empted multilateral negotiations in ICAO.

1) [Legal wrangles over the extraterritorial dimension of Directive 2008/101](#)

The illegal and unacceptable extraterritorial application of the EU directive was the first and most politically substantive issue raised in the ATA case. Whereas its opponents ascertained that the EU had exceeded the bounds of its jurisdiction under international law, Advocate General Kokott argued in favour of the EU arguments that this claim was unfounded and based on "an erroneous and highly superficial reading of the directive". She argued that the directive did not regulate activities outside the EU, as it was concerned only with *aircrafts' arrivals and departures* from European aerodromes, subject to EU territorial jurisdiction, and that including emissions from the whole length of the flight merely amounted to "taking into account" of events that occurred outside EU's territorial jurisdiction without imposing a "concrete" extraterritorial rule of conduct. The judgment of the Court of Justice broadly reflected this reasoning,

emphasising on the right of the EU to exercise its “unlimited jurisdiction”¹⁰⁴ over aircrafts present in its territory and sweeping away the arguments related to the emissions occurring outside the EU territory with a blunt statement that “whether the pollution (here supposedly GHG emissions) suffered in the EU originate in an event which occurs partly outside that territory” was not such as to call into question the full applicability of EU law.¹⁰⁵

Havel and Mulligan have denounced these conclusions, calling a logical fallacy¹⁰⁶ the legal reasoning justifying the unbounded jurisdiction of EU law by the mere physical contact of the aircrafts with EU territory. They argued that, although without assuming it, both the Opinion and the Judgment of the Court’s interpretation applied the so-called ‘effect doctrine’; a contested doctrine of territorial jurisdiction developed in the context of US antitrust law, according to which “a State exercises jurisdiction over conducts occurring outside its territory that is intended to have or does have substantial cognizable effects inside its territory¹⁰⁷”. Eckhard Pache also estimated that the Aviation ETS Directive, indeed “represented a fundamentally problematic intervention in the sovereignty of third countries”, but could nevertheless be justified under the ‘effect doctrine’, based on the fact that “GHG emissions from international aviation impact on climate change and climate change in turn impacts on the territory of the EU¹⁰⁸”. This argument, which echoed the concerns of the European Commission about carbon leakage¹⁰⁹, was also endorsed by the advocate general as primary justification for the extensive application of the directive.

Furthermore, it has been convincingly demonstrated that legislations having some extraterritorial effect have become quite common in States’ practice¹¹⁰. Relevant to the current discussion, in the domain of environmental protection it is often the case that “environmental standards unilaterally adopted within a regulatory jurisdiction exercising market power” directly affect foreign producers who want to sell their goods or provide their services in that market, a phenomenon which has even been coined by the term “transnational environmental law¹¹¹”. A landmark precedent in this regard is the WTO Dispute Settlement Appellate Body Decision in the *US Shrimp Case*¹¹², which ultimately upheld the ban imposed by the US on imported shrimp products according to the fishing method (without the use a device preventing the incidental catch of protected sea turtles) and which affected fishers in South East Asia. The Appellate Body considered the nexus between the territorial waters of the United States and the migrating sea turtles was

¹⁰⁴ Judgment case C-366/10, paragraph 124

¹⁰⁵ Judgment case C-366/10, paragraph 129

¹⁰⁶ Havel, Bryan F, Mulligan, John Q, LocCi, p 19

¹⁰⁷ See Restatement 3rd of Foreign Relations Law, US ss 402-403

¹⁰⁸ PacheEckhard, “on the compatibility with International Legal Provisions of Including Greenhouse Gas Emissions from International Aviation in the EU Emission Allowance Trading Scheme as a Result of the Proposed Changes to the EU Emission Allowance Trading Directive”, legal Opinion commissioned by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Zurwburg, 15 April 2008, section F, pp 67-81

¹⁰⁹ Carbon leakage arises when a carbon price leads domestic businesses to relocate in or purchase more goods from foreign jurisdictions where carbon is not priced, which may have two adverse consequences. The first one is economic and relates to loss of competitiveness, while the second concerns the risk of offsetting the carbon reduction efforts, resulting in no net reduction of global CO2 emissions. In the international aviation sector, this relates to the re-rooting of flights so as to avoid European soils, perhaps towards longer and thus more energy consuming journeys. See European Commission, COM (2006) 818 final; SEC(2006)1684, “Impact Assessment of the Inclusion of Aviation Activities in the Scheme for Greenhouse Gases Emission Allowance Trading within the Community”

¹¹⁰ Mayer, Benoit, op cit, p 1130, Bodansky, Daniel, “What is so bad about Unilateral Action to Protect the Environment?”, *European Journal of International Law*, Vol 11, No2, 2000, pp 339-347

¹¹¹ Bodansky, Daniel, Shaffer, Gregory, “Transnational, Unilateralism and International Law”, Legal Studies Research Paper No 11-34, University of Minnesota Law School, *SSRN paper*, 31 August 2011

¹¹² Case *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/RW, Report of the Appellate Body, on article 21.5, 22 October 2001

enough for the US to exercise jurisdiction over them. Thereby, considering the transboundary nature of the air and climate, it has been suggested that by analogy with this case could support EU extended jurisdiction¹¹³.

According to this innovative approach to jurisdiction, extraterritorial laws entail a breach of sovereignty only where they become undesirable for the stability of international relations, notably because they unreasonably impede on other states' sovereign right to exercise their own¹¹⁴. This was also the approach of the Advocate General, who argued that the directive did not infringe on other States' sovereignty because it did not prevent them from adopting their own climate change laws¹¹⁵. Hence, this approach has some merits, as it takes account of the increased interdependence of the globalized international system.

Yet, such flexible approach to sovereignty is far from undisputed. It is notably strongly opposed by emerging powers like China and also by the United States, who hold much more conservative views on the protection of their national sovereign rights. For instance, Havel and Macmullan rightly submitted that "at no point the Advocate General considers the possibility that exclusive sovereignty over a State's airspace might include the ability to decide whether a State's own carriers, flying over the State's airspace or over the high seas, should be subject to any emissions regulation whatsoever¹¹⁶". Moreover, dangers of conflicts of laws loom large under a widespread and self-determined attribution of 'effect' jurisdiction, in particular in the broad and ramified field of climate change. Hence, in the words of Havel and Mulligan, "the boundary pushing use of the effect test... has wide-ranging implications for environmental law that should excite green activists and terrify businesses¹¹⁷".

In the light of these arguments, the decision of the ECJ has not sufficed to appease the tensions and settle the issue. On the contrary, third States have reportedly contemplated bringing the argument to other forums such as the ICAO council or the WTO Dispute Settlement Body. This could yield further complications for the consistency of international system if these forums issued diverging interpretations and outcomes.

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2) Sovereignty Breach linked to the Action of the EU outside the ICAO framework

The claim of sovereignty breach was not exhausted by accusations of extraterritoriality. The unilateral action of the EU has also been blamed for bypassing the mandate given to ICAO by the Kyoto Protocol in article 2.2. Indeed, the fact that this article provides that "developed States *shall* pursue limitation or reduction of GHG...working through the ICAO and the IMO, respectively" has triggered important discussions as to whether it merely expressed a preference for multilateralism or instead imposed an obligation on the EU not to adopt unilateral measures. In the ATA case, although the ECJ denied the recevability of the claim, the Advocate General expressed the view that this provision did not attribute an exclusive competence to the ICAO for limiting GHG emissions from international aviation and that it did not entail a negative obligation for the EU to await a multilateral agreement¹¹⁸. Her conclusions were quite strong in that she argued that such interpretation would be contrary to the objectives of the UNFCCC and

¹¹³ PacheEckhard, op cit, p 75

¹¹⁴ See Ryngaert's concept of "Jurisdictional Reasonableness", in Ryngaert, Cedric, "Jurisdiction in International Law", Oxford University Press, Oxford, 2008

¹¹⁵ Kokott, Juliane, Opinion, paragraphs 157-159

¹¹⁶ Havel, Bryan F, Mulligan, John Q, Loc Cit, p 22

¹¹⁷ *Ibid*

¹¹⁸ Advocate General Opinion, paragraph 174-188

the Kyoto Protocol and that “the EU institutions could not reasonably be required to give the ICAO bodies unlimited time in which to develop a multilateral solution”. Nonetheless, whereas article 2.2 KP could thus arguably not impose on the member states to refrain from adopting their own unilateral measures to reduce emissions from aviation, it can hardly be construed as giving a ‘green light’ to unilateral measures including other ICAO members’ airlines and emissions. This interpretation is compounded by the fact that both ICAO resolutions A36-22 and A37-19 expressed extreme reluctance towards the unilateral implementation of MBMs. In this regard, it appears logical that whereas states may have agreed to possibly curtail their sovereignty by accepting international obligations from a multilateral agreement regulating emissions from aviation, this did not extend to them agreeing to be dragged along in the unilateral endeavors of one of their members. Thus, in response to the Advocate General’s claim that “EU institutions could not reasonably be required to await a multilateral solution”, it can be replied that other ICAO members can not be expected to have agreed that a failure to reach a global agreement would entail their aviation emissions be regulated by foreign jurisdictions¹¹⁹.

Of course, “what is politically desirable is not necessarily the only authorized pathway¹²⁰” and indeed, for one thing, ICAO Resolutions are mainly political documents with no legally binding force beyond “soft law” and furthermore, all EU member states placed reservations on these declarations, reserving their right to enact and apply MBMs *in their territory*¹²¹. Overall, the EU seems to have taken advantage of the absence of a strict negative obligation in international law “not to act unilaterally” to adopt the Aviation ETS directive.

From this standpoint, however, we can turn around the argument quoted above and remark that one of the lessons of this case might be that *what is not strictly prohibited is not necessarily legitimate, and thus enforceable*, in the international context where cooperation between independent states is based on subtle compromises embodied in the concept of political regimes¹²².

3) The political analysis of the Opposition to the Aviation directive in the light of process legitimation

Beyond reasoned divergences of interpretation of legal principles, understanding the roots of the unprecedented severe opposition to the EU directive necessitates to explore its political context of adoption. Without entering into ‘power-politics’ arguments, it must be recognized that political regimes are institutionally grounded in “norms and procedures around which the expectations of actors converge¹²³”. Arguably, the ‘soft law’ instruments expressed in article 2.2 of the Kyoto Protocol and the ICAO Assembly Resolutions embody expectations of conduct from the members of these regimes geared towards a multilateral norm-making process. Consequently, in my understanding, the fierce opposition to the EU Aviation Directive results mainly from its provocative nature, which contravened the expectations of other members of the international community. Indeed, beyond extraterritoriality, the EU Aviation directive undisputedly casts an international aura. First of all, the preamble of the Directive lists the EU’s

¹¹⁹ Havel, Bryan F, Mulligan, John Q, LocCit, p 24

¹²⁰ Meyer, Benoit, op cit, p 1131

¹²¹ Directive 2008/101, recital 9, emphasis added by the author

¹²² Keohane, Robert, O, *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton, Princeton University Press, 2005, 290 pages

¹²³ Krasner, Stephen D. 1982. “Structural Causes and Regime Consequences: Regimes as Intervening Variables.” *International Organization* 36/2 (Spring)

commitments under the UNFCCC and the unsatisfying results of the multilateral negotiations in ICAO as justifications for its adoption¹²⁴. Secondly, as we have showed earlier, the application of the directive is made contingent to developments in foreign jurisdictions. This makes clear that this piece of legislation was intended as a provocation to a past record of international community's failure in this domain. Thirdly, as mentioned earlier, the directive's application to foreign carriers has been expressly justified by concerns of competitiveness and environmental effectiveness through carbon leakage, which make the most controversial aspects of the directive rely on considerations for events occurring in the wider international environment. All three aspects mentioned above enlighten the EU purposive unilateral legal entrepreneurship¹²⁵. This policy choice can fit with EU's proclaimed preference for multilateral solution if interpreted in the light of EU "effective multilateralism¹²⁶" approach to foreign policy. In this regard, it has been acknowledged that the EU has repeatedly pronounced its preference for a multilateral solution, which is consistent with the normative image it has of itself as an international actor¹²⁷. This preference has been expressly enriched in the text of the Aviation ETS directive, which, on the one hand, pointed to the failure of ICAO to propose new legal instruments as justification, and on the other hand foresees its amendment in the event that a multilateral agreement was concluded¹²⁸. On the other hand, one cannot help the feeling that EU's unilateral move displays some degree of 'power' political pressure on the international community. Hence, EU action can also be interpreted through the lens of multipolarity as the EU "seeking to use its market power to stimulate climate action and to substitute for climate inaction elsewhere"¹²⁹. Such view is reflected by the critics often heard in the foreign press that the EU is trying to compensate its loss of international power by unilaterally imposing standards serving its interests to the detriment of others¹³⁰.

Notwithstanding the merits of these accusations, it has also been reasonably argued that if legitimacy must be viewed mainly in terms of process, "it is clearly not right for one state to make decisions that affect the entire community¹³¹", even more so, perhaps, when such decision aims to palliate a staged multilateral norm-making process. Thus, it is plausible that the extreme opposition to the EU ETS can be better analysed in connection with the political claim of the Union to impose its leadership role in this domain. Indeed, as illustrated by the Chinese reaction, above all, what is being fought against is the fear that this model will be extended to other sectors¹³², and that "if the EU gets away with this unilateral scheme, what's to stop them from imposing all sorts of new 'eco-charges' on other activities outside the

¹²⁴ Recital 7 to 9 of Directive 2008/101/EC

¹²⁵ Here I refer to the definition of unilateralism by M. Reisman, 'Unilateral Actions and the Transformation of the World Constitutive Process: The Special Problem of Humanitarian Intervention' (2000) 11 EJIL 3, cited in Rajamani, Lavanya, Scott, Joanne, Op cit, p 8

¹²⁶ European Commission, "The European Union and the United Nations: The Choice of Multilateralism" COM(2003) 256 final, Brussels, 10 September 2003

¹²⁷ Higgott, Richard, "Multipolarity and Transatlantic Relations: Normative Aspirations and Practical Limits of EU Foreign Policy", *Garnet Working Paper No 76/10*, April 2010

¹²⁸ Recital 9 and 5 of Directive 2008/101/EC respectively

¹²⁹ Rajamani, Lavanya, "European Union, Climate Action Hero?", *Indian Express Online*, 3 August 2011

¹³⁰ Holslag, Jonathan, "Europe's Normative Disconnect with the Emerging Power, BICCS Asia Papers Vol 5(4), BICCS, 2009

¹³¹ Bodansky, Daniel, "What is so bad about Unilateral Action to Protect the Environment?", *European Journal of International Law*, Vol 11, No2, 2000, pp 339-347

¹³² Quote by LuoRui, senior consultant at ICF international reported in an interview by Meng Si for China Dialogue, "The view from Chinese Airspace", *China Dialogue*, November 3, 2011; this concern was also expressed by Chai Haibo, deputy secretary general of the China Air Transport Association as reported in an article published on CAAC website, Wang Haiqi, "CAAC 运用策略得当:欧盟暂停部分碳税方案" ("CAAC to make good use its strategy: the EU to suspend part of the Carbon Tax Scheme"), 12 February 2012

EU¹³³”. This is compounded by the fact that the European Commission already launched consultation toward the inclusion of bunker fuels in the ETS, on pretty much the same grounds as for the Aviation ETS¹³⁴.

Chapter IV: Conclusive Remarks: Back to multilateralism, the EU Aviation directive crisis catalyzer for regime change?

The international dispute raised by the adoption of the EU Aviation ETS Directive has confirmed that norms do matter in international politics, and in particular they play an important role in the development of efficient multilateral frameworks of global governance. In particular, this case has revealed that distinct regimes built at different times towards the achievement of specific normative and political objectives and obeying to diverging principles do not harmonize automatically. Harmonization can only result from political choices. In the absence of a consensus in the political organs of these regimes, normative clashes can effectively frustrate the achievement of the cooperation goals. The ambiguous horizontal dynamics between ICAO and the UNFCCC offered a good illustration of such clash. In this regard, the relationship between “legal regimes” and “political regimes” deserves much closer attention from academic research, so that the nexus between inter-regime ‘norms collision’ and the phenomenon of regime institutional stagnation can be better understood.

The other important revelation of this case is that in such context, the unilateral imposition of an alternative path, away from the multilateral framework but nevertheless involving the other regime members against their will is unlikely to be received with indulgence by affected countries. Indeed, despite the claim by the EU that the adoption of the Aviation ETS directive “was developed in line with the approach endorsed by ICAO in 2004¹³⁵”, such assumption clearly overlooked the fact that the wording of Resolution A35-5 merely accounted for the absence of consensus in the international community at the time to build a global system of MBMs. The decision by the European Court of Justice has not been able to quiet down the claims as to the unlawfulness of the European move because the questions raised by the ATA case involved a balancing of different norms, a political determination which was bound to be controversial; especially because what was at stake was a pillar of EU climate and energy policy, together with a major element of “its attempt at leadership in international climate change negotiations¹³⁶”.

The political stalemate which has been reached in the spring this year, when it appeared that China would clearly not abide by the European rules and that economic retaliations alluded to a possible “trade war” has certainly clarified the political boundaries on the exercise by the EU of its self attributed ‘leadership by example’. In particular, the capacity of an increasing number of emerging powers to resist normative imposition when they find that this does not serve their interest makes this way of action more and more adventurous for the EU. Instead of ‘effective multilateralism’, the unilateral act of the EU seems to have exercised ‘negative leadership’, as the directive has been described as “a polarizing obstacle that is

¹³³ Quote by Tom Petri, Chairman of the Aviation sub-committee of the Transportation and Infrastructure Committee of the United States House of Representatives which introduced the bill for a “European Union Emissions Trading Scheme Prohibition Act of 2011”, reported by CAPA in the Press release, “U.S House Votes to Halt EU Air Tax”, 25 October 2011

¹³⁴ Press Release, “Commission Launches Consultation to Address Greenhouse Gas Emissions from Ships”, 19 January 2012

¹³⁵ Directive 2008/101, recital 9, and also recently, Jos Delbeke Keynote Speech “A New Flight Plan - Getting Global Aviation Climate Measures Off the Ground”, 7 February 2012

¹³⁶ Christian Carey, “Battle of the skies”, *China dialogue*, 3 November 2011

preventing real progress¹³⁷". Although EU-China bilateral practical cooperation and China's efforts to bring about its own national ETS are unlikely to be affected by the row because their development relies more on the NDRC's own assessment of their merits¹³⁸, the political dialogue may be affected and spill over to the commercial sphere. Problematic is also the fact that the bilateral dispute meddles with the on going negotiations taking place in ICAO and the UNFCCC. Indeed, should the EU be willing compromise with China through a stretching of the "third country measures", it should consider the impact of this on the claims by other third countries¹³⁹. Moreover, although ICAO President Roberto Kobeh Gonzalez said that bilateral disputes over the EU ETS were not in discussion at ICAO, a Chinese official reportedly said in July that the "Chinese government didn't think that a bilateral channel was an acceptable way¹⁴⁰". Hence, China, with the large support of other powerful countries, the ICAO and a large part of the Aviation industry, may prefer to play the collective card to obtain a complete back down of the directive instead of relative 'equivalence' concessions from the EU.

However, recent developments in ICAO have come to somewhat temper such bleak scenario and have pointed towards a possible multilateral way out of the political crisis. Theories of regime construction and regime change have put forward, based notably on the successful precedent of the Montreal Convention on Ozone depletion¹⁴¹, that external 'crisis' occurring in the wider socioeconomic or political environment could act as a catalyser for collective action¹⁴². In this regard, the EU Aviation ETS' propelled political crisis may have indirectly contributed to achieving EU's multilateral objectives, where the long-term and incremental environmental effects of climate change had failed to produce the necessary stress. Indeed, arguably, the impasse created by, on the one hand, the determination of the EU "not to cave¹⁴³" under international pressure and hold on to 30 April 2013 deadline to collect aviation allowance fees, and, on the other hand, the threat of unhealthy normative competition and damaging trade retaliations seems to have renewed the momentum for multilateral negotiations in ICAO. Hence, since the New Delhi Declaration in the fall of 2011, the Ad-hoc Working Group on Market-based Measures created by ICAO's president Roberto Kobeh Gonzalez has made substantial progress. From initially six proposed alternatives for a global MBM system, four were adopted by the ICAO Council in March 2012, and were further narrowed down to three after a briefing in June 2012¹⁴⁴. These three options, namely 1) a Global Mandatory Offsetting; 2) a Global mandatory Offsetting Complemented by a revenue generation mechanism and 3) a Global Emissions Trading (cap and Trade) are being diligently studied by all the actors involved in the dispute, including China¹⁴⁵ even though is not yet part to the Ad hoc group¹⁴⁶. The group's final report is foreseen for the winter 2012. Furthermore, the recent summit of the "coalition of the unwilling" hosted by the

¹³⁷ Quoted from Tony Tyler, General Director of IATA at the Airlines AGM in Beijing in early June 2012, reported in Greenair, "Encouraging Progress at ICAO on Developing a Market-based Measure Should not be Undermined by Europe, says IATA", *Greenair online*, 15 June 2012

¹³⁸ Interview with Prof Cao Mingde, Beijing, 8 July 2012

¹³⁹ See statement by Peter Liese, Rapporteur MEP for Directive 2008/101, Press Release "The EU must not back down on aviation emission trading", 5 October 2011

¹⁴⁰ LanLan, "China's Airline Talks with EU Stall", *Op cit*

¹⁴¹ Levy, Marc A, Haas, Peter M, Keohane, Robert O, "Institutions for the Earth, Promoting International Environmental Protection", *Environment*, Vol 34, N°4, 1992, pp 12-36

¹⁴² Young, Oran R, "The Politics of International Regime Formation: Managing Natural Resources and The Environment", in *International Environmental Governance*, 2008, pp 89-115

¹⁴³ Quoted from Isaac Valero-Ladron, Spokesman for the European Commission Climate Action reported in Wiener, Aaron, "Airline Trade War? Global Opposition Grows Against EU Emissions Law", *Der Spiegel online*, February 2012

¹⁴⁴ ICAO Working Paper C-WP/13861, p 2

¹⁴⁵ Interview with personnel from CAAC legal research team in Beijing, 22 July 2012

¹⁴⁶ Since June 2012, the Ad hoc group is composed of: India, South Korea, Switzerland, Australia, Brazil, the EU, Japan, Mexico, Nigeria, the United States and the UAE

United States' department of Transportation on July 31st and August 1st 2012 did not result, like its predecessors of New Delhi and Moscow, in a collective bashing of the EU ETS and threats of retaliatory actions; On the contrary, it was reported that discussions focused on the ways to foster an alternative global plan that would replace the EU ETS.¹⁴⁷

Of course, it would be unreasonable to draw premature conclusions, as the normative struggles we highlighted have not yet been solved and still bear significantly on the technical discussions concerning the precise design of the adopted MBM system model. Moreover, the time pressure imposed by the EU deadline is not to the taste of all participants, which put the latter on the constant diplomatic brink. Whatever the outcome, it is definitely a good exercise for the refinement of EU's distinctive identity as a foreign policy actor¹⁴⁸ and the constraints of its self-imposed devotion to multilateralism and a 'rule-based' international order.

¹⁴⁷ "What to expect from D.C Meeting on EU ETS", July 30, 2012

¹⁴⁸ Higgott, Richard, LocCit, p 21

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GR:REEN-GEM DOCTORAL WORKING PAPERS SERIES

The Relational and Structural Power of the EU in Competition Policy: Addressing Asymmetry

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Abstract

Although there is a wide consensus among academics and practitioners that EU competition policy has non-negligible external implications, actual assessments of the power of the EU in this field varies significantly according to one's definition of power. Arguably, the existing literature puts too much emphasis on the exercise of coercive measures in individual competition cases and therefore over-evaluates the power of the EU. This paper addresses asymmetry between the relational and structural aspects of the Union employing both quantitative and qualitative data.

EU competition policy has solid legal basis and is highly supranational. Power sources of the Union are not only its large market size but also its comprehensive law with extraterritorial reach, considerable agency capacity and ability to act cohesively externally. Quantitative data underlines remarkable regulatory activities of the EU even against third-country based firms despite its relatively limited resources. Besides, an analysis of controversial trans-Atlantic cases, namely Boeing-McDonnell Douglas and GE-Honeywell indicates that the EU is increasingly acting as a single block against third states. In contrast to these pieces of evidence illustrating the EU's enormous relational power comparable to the US's, observations on EU structural power provide a moderate picture. In fact, the structural power of the EU is visible but not as strong as that of the US in terms of designing of multilateral institutions, and global standard-setting. Overall, only by recognizing this asymmetry between relational and structural aspects can we start to produce fruitful debate over EU regulatory power in competition policy on the global stage.

This research acknowledges the support of the FP7 large-scale integrated research project **GR:REEN - Global Re-ordering: Evolution through European Networks** European Commission Project Number: 266809 and the Erasmus Mundus Joint Doctorate **GEM- Globalisation, the EU, and Multilateralism** Project Number 2010-0010. The first draft of this article was presented at the GR:REEN Workshop 'Quantitative Indicators of European Power' at College of Europe, Bruges, 26 March 2012. The author is grateful to all participants, especially Dr. Eleni Xiarchogiannopoulou and Prof. Mario Telò for invaluable comments. The author also wishes to express his sincere gratitude to Prof. Janine Goetschy, René Schwok, Ms. Ee Lyn Chin, Ms. Basje Bender and Mr. Gustavo G. Müller for comments on a later draft.

Introduction

In the last two decades, the international dimension of competition policy has proven a politically salient issue. Competition cases involving transnational business activities across dozens of jurisdictions often result in contradictory decisions by national and regional competition authorities. Controversies over such cases can be regarded as the exercise of power by states and businesses, although these events may stimulate international cooperation for conflict prevention. Likewise, the authorities compete and cooperate at levels of standard-setting and designing of multilateral institutions on competition. This is also a way of exerting power, often done in a less visible way. One crucial and yet under-researched public actor in such processes of inter-jurisdictional competition and cooperation is the European Union (EU).

How one assesses the power of the EU on the global stage depends upon how he or she understands the concept of power. Arguably, the existing literature on EU competition policy puts too much stress on the analysis of the EU's coercive, direct influence in individual cases vis-à-vis third-country based enterprises. Classic examples in which the European Commission exhibited its ability to regulate even huge, politically powerful US-based multinational companies include antitrust cases such as International Business Machines (IBM) in 1984 (Raine 1985), Microsoft in 2004 (Takigawa 2005; Marsden 2007), and merger cases such as Boeing / McDonnell Douglas in 1997 (Damro 2001) and General Electric (GE) / Honeywell in 2001 (Morgan and McGuire 2004). While all of them are politically salient cases which triggered inter-governmental frictions, from a methodological perspective a selection bias seems serious here. In fact, this narrow focus on the exercise of coercive measures in individual cases may well lead to mis-evaluating the power of the EU. For example, some recent articles even refer to the Microsoft and GE / Honeywell cases to support their argument that the EU is an emerging regulatory empire (Zielonka 2008: 480; Suzuki 2009: 158). By contrast to this extreme view, a few researchers who pay attention to a structural aspect of actors' capacity such as the designing of international institutions highlight that the EU is not as powerful as it asserts to be (Damro 2006a; Wigger 2008). Given such unbalanced and unintegrated scholarly debate, it is now essential to draw a more comprehensive picture of EU power in competition policy in relation with outside states and their companies. For this purpose, we should pay particular attention to structural power as well as relational power.

The distinction between relational power and structural power should be clarified at this stage to avoid any confusion. What Susan Strange calls relational power is a conventional and perhaps still the most common understanding of power, which was defined by Robert Dahl (1957: 202-203) as the ability to 'make others do what they would not otherwise do'. In contrast to this actor-centered behavioural definition, structural power is the power of achieving one's preference over outcomes, deliberately or unintentionally, as a consequence of the actor's presence itself (Strange 1996: 25-27). This power is 'structural' in a sense that one's preference is achieved indirectly by affecting international structures. This uploading process of national interests and values to the international level is relevant because such preferences would become less particularistic, or at least less visible, and gain legitimacy when embedded in international institutions, be it formal or informal. It should be also stressed that structural power is broader than relational power. The idea of relational power links power to intentionality. By contrast,

structural power is a concept which takes into account not only deliberate actions and their direct effects, but also unintended and sometimes unconscious consequences¹.

To recapitulate, this research is structured around the following research question: how powerful is the EU in competition policy vis-à-vis third states and non-EU-based companies in terms of relational and structural power? The author argues that while the EU has become as strong as the US in this policy regarding relational power, it is premature to conclude that the former is challenging long-lasting US dominance. Empirical observations below show that the structural power of the EU is visible but still limited concerning global standard-setting and institution-building. Without recognizing this asymmetry, it would be unfruitful to discuss the regulatory influence of the EU in competition policy on the global stage. It should be noted that this article shall evaluate EU power in comparison with outside public actors. Transnational actors such as multinational companies are regarded as the regulated rather than stakeholders given the limited space and limited accumulation of literature on this topic.

This article is organized as follows. The next section will provide an overview of EU competition policy concerning competences and decision-making procedures. The second section will begin by identifying sources of regulatory power, and then proceed to operationalizing a key concept, the 'regulatory capacity', in the context of competition policy. The third part will analyse the relational power of the EU in competition law enforcement employing both quantitative and qualitative data. Quantitative data concerned are to be provided so as to measure the relational power of the EU *toward businesses* in comparison with other major public actors. A degree of external cohesiveness of the EU *vis-à-vis third states* will be also examined referring to transatlantic merger cases. The fourth part is dedicated to debate over the structural power of the EU. This article will conclude by summarizing major findings, and identifying potential venues for future research.

I EU competition policy: contents and competences

Since the scope of competition policy varies significantly across jurisdictions, it is necessary to introduce that of the EU before theoretical debate. Also, as for other EU policies, competence allocation among EU and Member States institutions is essential to understand legal context and identify major institutional actors. EU competition policy consists of four major areas, namely restrictive practices such as cartels (Art. 101 of the Treaty on the Functioning of the European Union (TFEU)), abuse of dominance (Art. 102), state aids (Art. 107-109), and mergers which include acquisitions and joint ventures (Council Regulation 139/2004; Commission Regulation 1033/2008). The EU has exclusive competence in this policy (Art. 3 (1) TFEU). In fact, it is one of the most supranational EU policies (Gerber 1994: 105-109; McGowan and Wilks 1995: 142; Cini and McGowan 2009: 41). In individual cases, the Directorate-General for Competition (DG COMP. Previously DG IV) of the European Commission investigates, advisory committees consisting of national representatives consult, and the college of EU Commissioners decide on a simple

¹ This is precisely where structural power defined by Susan Strange goes beyond Stephen Krasner's argument, which narrowly understands an institutionalized international structure as a deliberate projection of hegemon's preferences (Guzzini 1993: 456-457).

majority basis whether a case examined is compatible with the European internal market or not. In practice, the Commission decides on a unanimous basis in most cases. Importantly, the Council of the European Union and the European Parliament have no competence over individual cases. It is DG COMP which warns undertakings to stop anti-competitive business practices, initiates a formal procedure, investigates businesses, and requests them to provide relevant information. The European Commission has competence to impose penalty fees, structural remedies and / or other conditions for clearance, if necessary, on undertakings based on DG COMP opinions (Council Regulations 1 / 2003 Art. 17–26; 139 / 2004 Art. 11, 13-15).

In the adoption of EU Regulations and Directives, the Commission proposes, and the Council decides by Qualified Majority Voting after consultation with the European Parliament (Art. 103 and 109 TFEU). In terms of competence, state aid control is an exception². Nevertheless, it primarily concerns intra-EU activities, and therefore its inter-governmental character does not significantly affect external activities of the EU, the focus of this research. As for the legislature and the executive, supranationality characterizes the judiciary in this policy. All secondary EU legislations and Commission decisions on law infringements can be brought to the General Court (GC. Formerly, Court of First Instance) and the Court of Justice of the European Union (ECJ). There is a wide consensus in academia that judicial activism played a key role in the evolution of EU competition policy (McGowan and Cini 1999: 178-180). While this article does not focus on the integration process, a pivotal role of European courts in policy development is worth mentioning here. The ECJ and GC not only scrutinize Commission decisions, but also ‘shape’ policy (Gerber 1994: 108-109): a good example is the adoption of extraterritoriality doctrine discussed in the next section.

Despite such exceptionally supranational institutional setting, the role of national competition authorities and courts should not be forgotten. There is a certain division of labour among European and national competition watchdogs. Concerning mergers, the boundary is defined by the ‘Community dimension’ criteria³. As Council Regulation 139/2004 states in Article 1 (2), a proposed market ‘concentration’ (i.e. merger) has a Community dimension and is therefore exclusively an EU matter only when (a) the combined aggregate worldwide turnover of all the undertakings concerned is more than 5,000 million Euros, and (b) the aggregate Community-wide turnover of each of at least two undertakings concerned is more than 250 million Euros, but (c) each of the undertakings concerned does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State⁴. Regarding restrictive practices and monopoly, so-called ‘interstate trade clauses’ are key in deciding the border between EU and national control. Both Article 101 (1) and Article 102 TFEU state that the EU shall take action only when anti-competitive business agreements and practices affect ‘trade between Member States’.

The enforcement system of EU competition law experienced the Modernization Reform in 2004. With decentralization at its core, this reform aimed for assuring effective enforcement even after the eastern enlargement

² The Commission is entitled to monitor Member States’ aids such as subsidies to particular industries, but there is a derogation rule under which Member States could overturn Commission decisions under exceptional circumstances (Art. 108 (2) TFEU).

³ While it should be renamed as the Union dimension after the Lisbon Treaty, the Community dimension is still used in practice.

⁴ There are also clauses in the Regulation which leaves room for a flexible distribution of cases between the EU and Member States authorities (Cini and McGowan 2009: 134).

in 2004 and 2007. However, in practice, the Commission's influence did not shrink (Wilks 2005: 436-440). Regulation 1 / 2003 replacing Regulation 17 / 62 entitles Member States authorities and courts to directly apply Articles 101 and 102 TFEU in their treatment of non-Community-level cases (Regulation 1 /2003 Art. 5 and 6). Nevertheless, they can do so only in line with Commission decisions (Art. 16), and only after consulting with the Commission beforehand (Art. 11 (3)-(5)). Besides, the EU Commission can pre-empt national authorities by initiating its own investigation (Art. 11 (6)). In short, a point here is that the European Commission and its DG COMP manage their enormous workload with Member States authorities whereas this does not necessarily mean EU competition policy has become less supranational.

Although competition policy has been traditionally regarded as internal policy, its external dimension is of increasing importance in Europe. Together with Member States, the EU participates in competition-related international organizations such as the United Nations Conference on Trade and Development (UNCTAD), the Organisation for Economic Cooperation and Development (OECD), and the World Trade Organization (WTO). The EU represented solely by DG COMP is also a founding member of the International Competition Network (ICN), a competition-dedicated informal network of public officers and experts. Besides, the Union has competition-dedicated bilateral agreements with major trading partners, namely the US, Japan, Canada, South Korea, Brazil, China and Russia (European Commission: no date). The internationalization of EU competition policy caused a problem of legality when a bilateral agreement was signed between the European Commission on the EU side, and the Antitrust Division of Justice Department (DoJ) and Federal Trade Commission (FTC) on the US side. The French government claimed at the ECJ a conclusion of such an agreement exceeds the competence of the Commission. Subsequently, the ECJ declared that it was illegal despite the Commission's claim that it was an 'administrative agreement' without legal effects⁵. According to Article 218 (3) TFEU (ex Art. 228 (1) EEC), the Commission needs Council authorization to conclude legal agreements with third parties⁶. Therefore, only after the Council accepted a communiqué from the Commission, and made a Joint Decision with the Commission in 1995, did the agreement come into force with some adjustments⁷ (Damro 2006b: 109-113). Notwithstanding such a political struggle, considering all progresses in the external representation of the Union as well as the Member States, we can no longer dismiss the external dimension of EU competition policy.

In sum, EU competition laws cover major areas of regulation. Given the centrality of the European Commission and two European courts, one can summarize that EU competition policy is highly supranational. Nonetheless, the complexity of EU institutional setting and workload sharing with national authorities should not be neglected. It is also noteworthy that this policy has an external face not only concerning the EU's roles in international institutions, but also concerning the international impact of this 'internal' policy on third-country based businesses. Yet, whether the EU is a relevant international player or not is a matter of empirical analyses to be ascertained below.

⁵ ECJ judgement of 9 August 1994 (Case C-327/91).

⁶ In foreign and security affairs, it is the High Representative rather than the Commission which represents the Union.

⁷ The joint declaration makes it clear that the European Commission cannot exchange confidential business information with US counterparts unless companies concerned disclose it voluntarily. Official Journal of the EU, L 131 on 15 June 1995, pp. 38-39.

II Theories of international regulatory influence: operationalizing the concept of 'regulatory capacity'

A systematic analysis rather than a partial, random description of international actors power requires some theory-based identification of sources of power. Thus, this section attempts to identify concrete sources of international influence, be it relational or structural, in regulatory policies such as competition policy. In other words, this part has two objectives: to specify where the regulatory power of the EU comes from, and to operationalize key concepts for the analysis of competition policy.

The EU is an economic power because it has both carrots and sticks. For most multinational companies, the huge European Economic Area (EEA)- which is the European Single Market plus Iceland, Liechtenstein and Norway - is simply too large to neglect. It attracts a large amount of foreign direct investments, and companies operating within the EEA are in turn subject to EU laws. The former process of 'magnetic effect' (Bretherton and Vogler 2006: 28) and the latter process of EU regulation are inextricably linked. In combination, they enable the EU to exert considerable influence on both EU-origin and non-EU-origin companies in a legal coercive manner.

It should not come as a big surprise that many researchers have paid much attention to the carrots side particularly since the eastern enlargement in 2004. Nevertheless, a market-size-equals-market-power explanation (Drezner 2005: 843) has two serious shortcomings. First, it is one-sided, as already discussed above. Second, it is not useful when it comes to the analysis of EU power in particular policies. To put it differently, the sheer market size hardly explains the considerable variation of global impacts of EU regulations across issues.

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Interestingly, Bach and Newman attempt to go further in their recent research on data privacy and financial market regulation policies. Their research shows that the market size matters indeed, but there are too many phenomena it cannot explain. In other words, an agency could expand its regulatory power without an increase in the market size (Bach and Newman 2007: 832). A concept of the 'regulatory capacity' was coined by these two authors precisely to explain the remaining explanatory factors of regulatory power. The regulatory capacity consists of regulatory expertise, coherence and statutory sanctioning authority (Bach and Newman: 831-832). The quantification of those power sources would provide us researchers with a basis for temporal and geographical comparisons in a systematic manner.

Among the three determinants, the expertise of agencies is relatively easy to operationalize regardless policy areas: the budget size, the number of staffs, and their experience matter. But, it is worth reflecting on what 'statutory sanctioning authority' and 'coherence' mean specifically in the context of competition policy. Concerning the former, the geographical reach of jurisdictions, or the establishment of the extraterritoriality doctrine, is the key. The most active advocate of this doctrine is the US whereas the EU also adopted this idea in the ECJ judgement on Woodpulp case and the GC decision on Gencor / Lonrho case. In essence, European Courts as well as the Commission assert that the EU has judicial power over anti-competitive business practices as long as they are *implemented* in and have negative effects on the Single Market. This implementation doctrine, a particular type of

the extraterritoriality, applies regardless the headquarters location of firms concerned⁸. For example, even a merger of two non-EU-headquarter companies with no European subsidiaries could be pre-empted by the European Commission should the merger have immediate and significant adverse effects on the EEA.

Yet, except for the geographical reach of jurisdictions, law coverage is largely insufficient to explain the effectiveness of competition enforcement. Some countries have highly autonomous competition agencies, while others purposefully build up weak agencies in order to leave ample room for political intervention. This is why a fact that comprehensive competition law exists on paper does not necessarily mean a country concerned has stringent competition policy. Considering such a noticeable legislation-implementation gap in this field (Nicholson 2008: 1022-1027), enforcement effectiveness would be a better indicator of regulatory power than statutory sanctioning power.

The capacity to act externally cohesively, or 'the ability to agree' (Hill 1993: 315) in EU-studies terms, is another important factor which constrains international actors' bargaining power. In competition policy, a common and persistent problem for governments is how to cope with the following dilemma: effective competition law enforcement may adversely affect domestic firms' international competitiveness when other jurisdictions' regulation is significantly looser. Within the government, advocates of rigorous competition policy often disagree with supporters of industrial policy.

As for many other areas, the issue of consistency is much more crucial for the EU than for other international actors in this area. This is because the EU has supranational competition policy, while its industrial policy remains inter-governmental. On the one hand, the founders of the Rome Treaty clearly considered competition policy as necessary for the functioning of the customs union. It was relatively easy for the original six member states to accept some form of supranational competition regulation because none of them had much policy experience at that time. On the other hand, the EU still has only supportive competence in industrial policy – even if narrowly defined as the issues over which Directorate-General Industry and Enterprise have competence. This imbalance explains why EU competition watchdogs disagree at times with Member States as well as other DGs. All in all, it is too naïve to assume that the EU is monolithic in competition policy simply because it is a legally supranational area.

To sum up, current academic debate over the international politics of regulation goes much beyond the rather simplistic, 'the market size matters' argument. More concrete, micro-level factors enable us to explain policy-specific regulatory influence. It should be also noted that some indicators of regulatory power such as the agency capacity are easier to quantify than other indicators such as coherence. This is why the following sections employ both quantitative and qualitative analyses aiming for a better understanding of global impacts of EU competition policy.

⁸ Dabbah (2003: 167-191) provides the most comprehensive legal analysis of the extraterritorial issue in European and American context. For the EU case, see ECJ's judgement on the Woodpulp case (C-89/85 (A. Ahlström Osakeyhtiö and others v Commission)) and GC's judgement on the Gencor / Lonrho merger case (T-102 / 96 (Gencor v. Commission)). See also Kojima (2002) and Gerber (1983).

III The relational power of the EU: quantitative and qualitative indicators

Drawing attention to structural power does not mean we researchers may ignore relational power. On the contrary, the latter face of power remains essential. This behavioural understanding of power refers to direct and intentional influence of one actor on another by coercion (e.g. with military and / or legal force) or persuasion (e.g. with material incentives). The relational power of the EU *toward companies* means effective enforcement, which can be quantitatively measured and compared across jurisdictions. A key element for the relational power of the EU *toward third states* is the ability to agree, which will be examined below by a qualitative analysis of three cases.

Under-resourced and yet effective? Quantitative indicators of the power of the EU

Based on data from Global Competition Review (2011: 6-7, 14), Table 1 below compares 34 major jurisdictions (33 countries plus the EU) in terms of agency resources. The resources are measured in four ways, namely the budget, the staff number, GDP per staff, and length of average tenure. The table shows that DG COMP of the European Commission is one of the largest competition agencies around the world even without counting the Commission's legal service staffs. In terms of the staff number, Russia comes first (2957), followed by the US (1128), the EU (764) and Japan (741). Excluding Russia which is still in transition from a planned economy, the EU is the second largest. Those four players outnumber the others considerably. Regarding the budget, again the EU (90.8 million Euros) comes second. With the US competition authorities at the top (201.8), DG COMP is followed by Japan (67.8), Italy (67.3), South Korea (50.3) and Australia (47.9).

Therefore, there is little doubt that DG COMP is one of the biggest competition authorities around the world. However, the table also indicates that the EU watchdog is relatively under-resourced (See also Wilks 2010: 150). In terms of administrative burden measured by GDP per staff, DG COMP is the most overloaded institution among the 34. Moreover, 87% of the DG budget goes to salary (Global Competition Review 2011: 14). It is reported that this ratio is higher than that of most other countries such as Germany (72%), France (74%), the UK (Office of Fair Trade) (57%) and the US (FTC) (67%). There are only a few exceptions such as Belgium (93%). Regarding expertise measured by average tenure, the EU (six years) is only slightly above the average (seven years) and the median (six years and a half).

Given such limited resources, the policy performance of the EU is remarkable. Table 2 below provides Global Competition Review's ranking of competition authorities in 2011 according to general enforcement effectiveness. Together with the two US authorities and the UK Competition Commission, the European Commission achieved the top score five. There are also more specific pieces of evidence favourable for the EU. Table 3 shows total amounts of fines imposed on cartels in 2010 and average fines per case in 32 jurisdictions. In these aspects, the European Commission ranks number one with no comparable agencies. Furthermore, Table 4 vividly illustrates a sharp increase in cartel fees by the Commission over last 20 years. There was a sharp increase in the period of 2000-04. The amount soared even more sharply between 2005 and 2009. Major factors contributing this trend are the

Table 1: Measures of resource inputs into competition policy, by jurisdiction

Country	Agency Budget (€ million)	Agency Staff	GDP (\$ billion) / staff	Average tenure (year)
US (DOJ & FTC)	201.8	1128	13	13 (FTC)
EU (DG COMP)	90.8	764	23	6
Japan	67.8	741	8	17
Italy	67.3	119	18	11
South Korea	50.3	441	3	13
Australia	47.9	336	4	7
Russia	43.8	2957	1	4
UK (CC & OFT)	40.1	318	8	5 (CC); 7.5 (OFT)
Canada	28.4	267	7	12
Germany	23.0	209	17	10
France	20.4	154	18	5
Netherlands	17.6	214	4	5
South Africa	16.2	163	3	2
Sweden	14.5	113	5	7
Spain	13.5	193	8	3
Poland	12.7	150	3	4.5
Greece	10.9	45	7	4
Norway	10.9	108	5	4
Mexico	9.9	183	6	5
Hungary	9.3	62	2	8
Denmark	9.0	74	5	6
Portugal	8.6	74	3	7
Switzerland	7.4	57	11	6.5
Brazil (CADE & SDE & SEAE)	6.7	257	10	3(CADE) 7(SDE) 10(SEAE)
Chile	5.3	87	3	5
Finland	5.3	56	5	9
Ireland	5.1	39	6	4
Israel	5.1	79	3	3
Belgium (DG & CC)	4.5	64	8	5
New Zealand	4.5	78	2	7
Austria	2.4	32	13	N/A
Slovak Republic	2.4	69	1	7
Pakistan	1.8	52	4	N/A
Lithuania	1.0	41	1	10
Average	25.5	286	7	7
Median	10.9	116	5	6.4

Source: Global Competition Review (2011: 6-7, 14). For GDP, the World Bank (2012). GDP data is from year 2011, except for New Zealand, whose data is year 2010. DOJ=Department of Justice's antitrust division, FTC=Fair Trade Commission, CC=Competition Commission, OFT=Office of Fair Trading, CADE=Council for Economic Defence, SDE=Secretariat of Economic Law, SEAE=Secretariat for Economic Monitoring, DG=Directorate General for Competition, CC=Competition Council.

Table 2: Global Competition Review's rating of 39 competition agencies in terms enforcement effectiveness

European Commission	5	Denmark	3.5	Russia	3
UK (CC)	5	Italy	3.5	Sweden	3
US (DoJ)	5	New Zealand	3.5	Switzerland	3
US (FTC)	5	South Africa	3.5	Belgium	2.5
France	4.5	Spain	3.5	Brazil (SEAE)	2.5
Germany	4.5	Austria	3	Chile	2.5
UK (OFT)	4.5	Brazil (SDE)	3	Greece	2.5
Australia	4	Czech Republic	3	Ireland	2.5
Japan	4	Finland	3	Mexico	2.5
South Korea	4	Hungary	3	Pakistan	2.5
The Netherlands	4	Israel	3	Poland	2.5
Brazil (CADE)	3.5	Norway	3	Slovakia	2
Canada	3.5	Portugal	3	Lithuania	2

Source: Global Competition Review (2011: 3). Note: scaled between 5 (exceptionally effective) and 1 (ineffective).

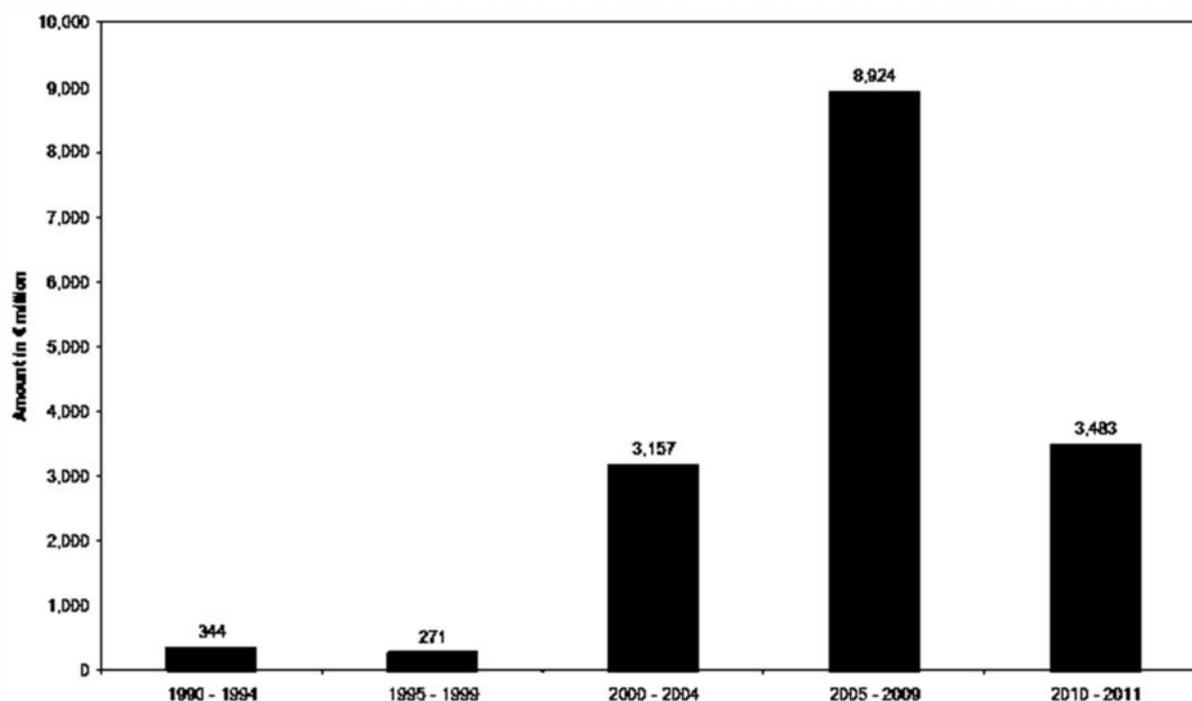
Table 3: Cartel fines imposed in 2010 in 32 jurisdictions

Country	cartel fines	average fines	Country	cartel fines	average fines
	(€ million)			(€ million)	
European Commission	2900.0	410	Mexico	10.9	3.6
Brazil (CADE)	1000.0	257.3	Australia	6.8	3.41
Japan	600.0	3.5	Canada	5.9	5.4
France	440.3	36.7	Switzerland	5.6	2.81
Korea	373.0	10.7	Belgium	3.5	3.5
US (DoJ)	372.8	21.7	Czech Republic	3.1	1
Germany	267.0	22	Pakistan	2.6	1
UK (OFT)	255.0	255	New Zealand	2.0	1
The Netherlands	137.0	11.4	Austria	1.5	1.5
Italy	121.2	24.2	Lithuania	1.0	0.2
South Africa	71.5	N/A	Israel	0.7	N/A
Poland	40.0	N/A	Slovakia	0.6	0.1
Spain	40.0	8	Portugal	0.5	0.5
Hungary	26.9	N/A	Chile	0.2	0.2
Russia	21.7	1	Finland	0.0	0
Greece	20.2	6.7	Ireland	0.0	0

Source: Global Competition Review (2011: 18).

Table 4: Amount of fines on cartels imposed by the European Commission (adjusted for court judgements) 1990 -

2011



Source: European Commission (2012 a). Note: Amounts as imposed by the Commission and not corrected for changes following European courts judgments and only considering cartel infringements under Article 101 TFEU.

Table 5: Proportion of mergers going to in-depth review

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Authority	No. in-depth review	% in-depth review	Authority	No. in-depth review	% in-depth review
Chile	9	100	Ireland	2	4
New Zealand	12	100	UK (OFT)	3	4
Poland	222	100	Austria	7	3
UK (CC)	3	100	Canada	7	3
Australia	159	50	Spain	3	3
Brazil (SEAE)	253	32	Switzerland	1	3
Brazil (CADE)	162	25	Czech Republic	1	2
Denmark	2	20	Germany	15	2
Mexico	15	16	Italy	12	2
Israel	21	14	Japan	6	2
South Africa	31	14	Pakistan	1	2
Finland	2	12	Sweden	1	2
South Korea	60	12	US (DoJ)	28	2
Hungary	4	8	US (FTC)	20	2
Slovak Republic	3	8	European Commission	4	1
Russia	297	6	France	2	1
Greece	7	6	Norway	5	1
Belgium	1	5	Lithuania	0	0
The Netherlands	4	5	Portugal	0	0

Source: Global Competition Review (2011: 16)

adoption of a new guideline on cartel fees calculation in 2006 and a success of the leniency programme. The leniency programme or amnesty programme is a mechanism to combat illegal cartels by offering exemptions for or reduction of penalties, be they criminal or civil, to 'whistle blowers' (companies or individuals that confess their commitment to cartels and cooperate with investigators by providing relevant information).

To interpret Table 3 comparing cartel fees across jurisdictions, three qualifications must be made. The first point is a technical issue concerning the uniqueness of the EU governance structure. The EU has competence only over cases with the Community dimension. The other cases are left for Member States. Secondly, we should keep in mind that some competition authorities such as the US's and the UK's have criminal sanctions as well as non-criminal penalties. Lastly, potential costs at civil litigation are less visible but important deterrence to the infringement of competition laws. The bigger a prospect of litigation by private actors (consumers, firms, and their associations) is, the smaller the number of competition law infringements (Aoyagi 2012: 117-118). Anglo-Saxon countries have much more effective systems of private enforcement than most other countries due to a culture of class action⁹. By contrast, as the European Commission addressed in its Green Paper in 2005 (European Commission 2005: 4) and White paper 2008 (European Commission 2008a: 2) on collective damages action against the infringement of EU competition laws, an effective civil litigation system does not exist in Europe except for a few Member States.

Apart from cartel control, it is not an easy task to compare the effectiveness of competition authorities. Some people focus on the number of investigations initiated and completed per year, while others emphasize the speed of review despite a fact that quick administrative decisions could simply mean less serious scrutiny. One more reliable indicator of enforcement effectiveness is the *proportion* rather than the number of merger files which go to in-depth review. The smaller this proportion is, the more effective first-phase screening an authority has (Global Competition Review 2011: 16). As Table 5 above presents, the European Commission, France and Norway have the lowest level of percentage of in-depth review, which is only one per cent, suggesting that they have exceptionally sophisticated investigative and analytical systems.

Behind such noticeable effectiveness of DG COMP and the Commission are with little doubt two factors, although their contributions are difficult to measure quantitatively. Firstly, in the current EU competition system, who pays most administrative costs is not the regulator, but the regulated. In the past, the EU had a pre-notification rule under Council Regulation 17 / 62 on the implementation of Art. 101 and 102 TFEU (formerly 81 and 82 EC). By contrast, the current rule Regulation 1 / 2003 adopted in 2004 does not require enterprises to notify all business agreements affecting trade between Member States. Instead, every business must acknowledge EU laws and assess prospective competition effects of their cross-national activities by themselves. This self-check system relieved DG COMP from evaluating a flood of mostly uncontroversial requests for permission to conduct certain business activities. The abolition of the notification system was crucial because the eastern enlargement in 2004 and 2007 apparently imposed more administrative burden on EU authorities.

⁹ There is a criticism to the Anglo-Saxon style private enforcement saying that, despite merits of the collective damages action mechanism, the excessive use of class actions and punitive rather than compensatory penalties could disadvantage businesses unfairly. See European Commission (2008b: 14).

In addition, the vertical division of labour according to the Community dimension criteria for merger control, and the inter-state trade criteria for restrictive practices and abuse of dominance, enable the Commission to concentrate on complex cases. After five years of formal intensive investigation, the European Commission (2004) asserted in 2004 that Microsoft, a US-based computer company, broke EU laws by abusing its monopolistic power and disadvantaging its competitors in the personal computers operational system (OS) market¹⁰. The Commission ordered Microsoft (i) to disclose their inter-operational information to its competitors, (ii) to offer its Windows OS products to personal computer manufacturers without tying its own media player, (ii) and to pay record-breaking 497 million Euro penalty fees. In addition, Microsoft was charged a massive amount of 899 million Euro fees for non-compliance with the 2004 Commission decision (European Commission 2008 c). Only one year later, the Intel case (European Commission 2009)¹¹ broke the record again. Because of the abuse of dominant market position in the computer chips manufacturing industry, as large as 1.06 billion Euro penalty fees were imposed on Intel, another US-headquarter multinational company.

It is fair to say that there is abundant quantitative data which demonstrate considerable and ever-growing regulatory influence of the EU on both EU and non-EU companies in competition policy. The EU is not outstanding when we look at agency resources, but it is outstanding in terms of regulatory impacts. While EU regulation presented here is delivered to companies, its ability to resist political pressures from third states in controversial cases is also noticeable, as we shall see in the following section.

A qualitative analysis of the relational power of the EU: the increasing ability to agree

A gradual qualitative change in EU external relations is evident in merger cases. As Bretherton and Vogler (2006: 88) point out, '[a]lthough the EU increasingly appears to outsiders as a single economic entity, its external representation and capacity to act still varies by issue' even among economic policies. Therefore, while competition policy is one of the most supranational policies of the EU, we should not presuppose that the EU is a unitary actor. This is why a degree of the EU's internal consistency is worth examining.

In the last several decades, we have witnessed a somewhat strange combination of two EU policies. One the one hand, EU competition policy has emerged as one of the most rigorous ones around the world since the mid-1980s (Wilks 2010: 136-137). Soaring fines on international cartels and monopolists are primary examples. On the other hand, the Treaty on the European Union explicitly established the idea of European industrial policy in its newly inserted Title XIII¹². A series of multiannual framework programmes concerning research and technological development in the late 1980s and 1990s paved a way for the Lisbon Strategy. The Lisbon Strategy is a comprehensive non-binding multiannual programme launched in 2000. It aims to foster knowledge-based highly-productive European economies (For a historical overview, see Rodrigues 2009). It is partly a regional response to

¹⁰ Case 37792.

¹¹ Case 37990.

¹² It was renumbered as Title XVII by the Lisbon Treaty.

slow economic growth in EU countries and increasing international competition with third states companies, notably American and Japanese ones. While its goals were not adequately achieved by the deadline, 2010, now the strategy was updated as the Europe 2020 programme.

In its annual reports on competition policy, the European Commission has continuously emphasized the positive contribution of this policy to the Lisbon Strategy and now Europe 2020 (e.g. The European Commission 2012b: 9-10). The argument is that competition creates a competitive economy¹³. However, this simplistic discourse should not be accepted without scrutiny. There is a recognition among numerous academics and practitioners that the international competitiveness of European firms could be undermined if the EU had substantially more rigorous competition rules than other major trading partners (Dewartripont and Legros 2009: 89; Blauburger and Krämer 2010: 7). This competition – competitiveness dilemma is serious indeed because there is no equivalence of EU state aid control in other regions. Hence, intra-EU controversy between pro-industrial and pro-competition actors often upsurges when politically sensitive industries are concerned.

The most relevant empirical study about the EU's ability to agree in this policy is that of Cini and McGowan (2009: 154-155; 157-159), which compares three cases in the aircraft industry, namely Aerospatiale/Alenia/de Havilland¹⁴, Boeing/McDonnell Douglas¹⁵ and GE/Honeywell¹⁶ merger plans. Their analysis implies that the EU acts as a cohesive group when it deals with solely third-country based companies. By contrast, the Union is more likely to show internal controversy when EU based companies are involved¹⁷. So as to develop this argument, it is worth briefly summarizing the three cases first. The Aerospatiale/Alenia/de Havilland case was the first case in which the Commission prohibited a merger plan. A consortium of French Aerospatiale and Italian Alenia, ATR, notified an acquisition of de Havilland, a Canadian branch of Boeing (US) in 1991. However, DG COMP suspected that the merging party would gain excessive market power in the civilian helicopter industry. The college of European Commissioners nearly split. One side was supporters of industrial policy, namely French and Italian Commissioners, and Commissioner for Industry Martin Bangemann. The other side was advocates of strict competition regulation led by Competition Commissioner Sir Leon Brittan. Nevertheless, in the end the Commission tamed strong opposition and decided prohibition of the merger by 9 to 7 with abstention by former Commission President Delors (Cini and McGowan 2009: 155).

By contrast, the European Commission reached consensus in the latter two cases. Both the Boeing/McDonnell Douglas and GE/Honeywell cases were merger plans between American companies. In 1997 The European Commission declared that a notified merger between Boeing and McDonnell Douglas might have anti-competitive

¹³ The Commission avoided stringent competition policy in its initial stages so as to foster national champions (1960s) and minimize negative effects of economic crises on European companies (1970s) (Cini and McGowan 2009: 21-29). It was only in the 1980s when pro-competition ethos became prominent due to (i) a rise of neoliberalism, (ii) strong leadership of Competition Commissioners, (iii) enactment of the Merger Regulation, and (iv) accumulation of case law and administrative expertise (Wilks and McGowan 1996: 245-248; McGowan and Wilks 199: 150-153).

¹⁴ Case M. 53.

¹⁵ Case M. 877.

¹⁶ Case M. 2220.

¹⁷ They analyze the Aerospatiale case as an example of politicization and clashes within the Commission, while the other two are examined to illustrate EU-US disputes concerning extraterritoriality.

effects on the aviation industry. Despite US opposition, the Commission stood still and imposed conditions on the merger. Similarly, EU and US authorities made contradictory decisions again on the merger plan between GE and Honeywell, large companies mainly operating in the electronics industry. While the FTC of the US cleared the notified merger without condition, the Commission decided in 2001 to prohibit the merger maintaining that it would distort competition in the military aviation engine market because of conglomerate effects.

If there is something to add to Cini and McGowan, it is a rather subtle improvement in EU cohesion over time. In the Boeing case, an escalation of political controversy occurred between EU and US sides, particularly from May to July 1997. Upon Boeing's request for governmental support, former US President Bill Clinton and former Vice President Al Gore expressed concerns about the Commission's decision to conduct in-depth investigation. When Karel van Miert, Competition Commissioner at that time presented his negative opinion on the merger, President Clinton even hinted a threat of trade retaliation in case the EU blocked the merger (Buerkle 1997). On the European side, former French President Jacques Chirac publicly requested the European Commission to take an autonomous decision, and former German Chancellor Helmut Kohl urged European aerospace companies to unite and confront a challenge from American competitors (Buerkle 1997). In parallel, the College of Commissioners conveyed grievances to US counterparts in response to their political pressures (for a full sequence of those events, see Aktas et al 2001: 455-457). It should be noticed that the EU side was unprepared to manage such a complex and politically salient issue ensuring horizontal and vertical coordination.

In the GE case, a fewer number of actors represented either side of the Atlantic Ocean. Regardless of political interference by former US President Bush during a highly sensitive period of concession negotiation between the EU and merging parties (Meller and Deutsch 2001), the EU acted as a single block against the US. Competition Commissioner at that time, Mario Monti, played a role as a single face of the European side. Although it was reported that Ireland representative abstained from a decision at the Concentration Advisory Committee (Meller 2001), an overwhelming majority the Committee supported Commissioner Monti's position¹⁸. In this way, one can observe increasing EU coherence. One possible explanation is that the transatlantic friction in the former case enhanced the ability of the EU to react as a block, despite external high pressures. Yet, it is still difficult to determine the cause of change given a limited number of comparable cases.

To sum up, a major qualitative indicator of EU relational power in competition policy is the degree of its external coherence. Coherence depends on whether the EU is dealing with solely non-EU companies or not. Also, the comparison of Boeing and GE cases demonstrates that the EU is becoming more cohesive over time, possibly because of interactions with the US government.

¹⁸ This is because, according to Meller, there was a large GE plant with 85,000 employees in the west part of Ireland at that time.

IV Not as strong as it asserts to be? The structural power of the EU

As defined in the introduction, structural power is the ability to put forward one's preference over others' through political structures with or without intention. It is power to set context and rules of the game in the global political economy¹⁹. One crucial aspect of structural power is the capacity of actors to design, build and manage international institutions, be it formal or informal, to promote their own preferences indirectly (Guzzini 1993: 456-457). The GATT-Bretton Woods system is a classic example of such institutionalized governance of the world economy where the US and its major allies set rules of the game in production, monetary and financial structures. Yet, even without such indirect institutional influence, political actors may exert structural power 'by their own presence' unintentionally and unconsciously. For example, an actor's belief or practice may serve as a model or at least as a reference to others because the former has more expertise and experience than the latter in a particular field. Specifically in the context of regulatory policies such as competition policy, global standard-setting can be regarded as a typical expression of such power. In short, two aspects of structural power are of great significance in the politics of global regulation: institution building and standard-setting capacities.

Designing multilateral institutions on competition

The idea of multilateral competition cooperation first appeared in the 1940s. The Havana Charter, which was agreed by 53 states in 1948 for the foundation of the International Trade Organization (ITO), included clauses on competition. However, the ITO remained inborn (Diebold 1952)²⁰. Since then, western countries and some other countries had focused on trade liberalization negotiation for nearly half a century in the framework of the General Agreements on Tariffs and Trade²¹. There has been some discussion about international competition cooperation at several international organizations such as the UNCTAD and the OECD. Nonetheless, despite some important OECD recommendations, cooperation at these organizations is limited in scope and remains purely voluntary. Until the 1980s, a major obstacle to multilateralism in this field was the reluctance of the US, a crucial state actor. As Dabbah (2003: 165) points out, the US preferred the status-quo because 'relying on extraterritorial application of domestic antitrust laws would reduce the incentives of countries for the internationalisation of antitrust policy in "bilateral" or "pluralist" sense' (emphasis in the original).

A momentum for institution building on a global scale came in the 1990s. The establishment of the WTO in 1995 after the long-awaited conclusion of GATT Uruguay Round negotiation was a spur for further global economic cooperation. Inter-governmental conflicts deriving from transatlantic divergence also encouraged interested parties to make new international rules on competition. Karel Van Miert, a former European Commissioner for Competition (1989-1999), was one the most vocal and enthusiastic advocates of binding multilateralism for international

¹⁹ Structural power should not be confused with soft power (Nye 2004: 5-6;11) or the power to change others' preferences by attractiveness of culture, political values and foreign policies.

²⁰ The main reason of the failure was that US Senate dismissed the Charter even without voting. Most other parties thought it as unrealistic to establish the ITO without the US, and did not ratify the Charter.

²¹ GATT was signed earlier than the ITO by 23 countries in Geneva in 1946.

competition cooperation. Although the OECD and UNCTAD among others dealt with the competition issue, Van Miert (1998) believed that the WTO was the most suitable arena for competition cooperation. He prefers the WTO because it 'has near universal membership and can provide a balanced response to the interests of both developed and developing countries'. He set up a Wise Men Group in 1994 with his own initiative, requested it to develop ideas about possible areas of competition rules for WTO negotiation (Van Miert 1997). Suggestions of the Wise Men, most importantly agreeing on core principles, and setting up adequate enforcement and dispute settlement mechanism, were accepted by the European Commission (Van Miert 1998). As a consequence, the Singapore WTO ministerial conference in 1996 identified the competition issue and other three as potential agenda for the WTO Doha Round. As a concrete step, a WTO Working Group on Trade and Competition was set up in December, immediately after the ministerial conference, without presupposing an initiation of negotiation in a later stage.

Although a few countries such as Japan, Canada and South Korea supported the position of the EU, disagreement between the EU and the US soon became clear. While the EU preferred binding multilateralism based on its own regional experience (Damro 2006a: 213-214), the US consistently opposed the creation of competition rules to which the WTO Dispute Settlement System could apply. A large majority of less developed countries were also against the EU plan for a different reason. From their viewpoint, developed countries have much more experience in competition policy than the less developed, and are therefore better placed to design global rules. Since there was no guarantee that developed countries would make rules which were beneficial for less developed countries, the latter found themselves disadvantaged in this policy. As a matter of fact, in the fifth Ministerial Conference at Cancun in 2003, stark opposition from the US and less developed countries surfaced. When the Working Group became inactive after this disagreement, a main forum for international cooperation on this issue apparently shifted from the WTO to the ICN.

The ICN is a unique informal network of competition officials and experts clearly inspired by suggestions from US Justice Department's advisory committee, the International Competition Policy Advisory Committee (ICPAC) (ICN: no date). The ICPAC was a group of antitrust officers, academic, lawyers and businesses, and aimed to 'address the global antitrust problems of the 21st Century'. It was formed in November 1997. After several meetings and extensive outreach research, the committee published the over-300-page Final Report²². Based on this reports' recommendation for a 'Global Competition Initiative' in Chapter 6 on Preparing for the Future (ICPAC 2000: 281-302), top antitrust officials from 14 jurisdictions²³ launched the ICN October 25, 2001 (ICN: no date). By May 2011, its membership soared to 117 competition agencies from 103 jurisdictions (ICN 2011: 1).

The ICN meets demands of less developed countries and, above all, that of the US. This is a virtual forum without legal personality. The ICN makes no binding rules and has no dispute settlement system. Its main purpose is voluntary policy convergence among participating countries through interactive activities such as conferences, and recommendation of best practices. As Wigger (2008: 198) argues, the US opposition against competition negotiation

²² Following the completion of this work, the Committee was dissolved in June 2000.

²³ Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States and Zambia.

at the WTO and full support for the ICN are to some extent linked to the transatlantic controversy over extraterritoriality discussed above. From this view point, the US rejection of the EU ambition can be regarded as a response to emerging EU regulatory power. While this shift of gravity from the WTO to the ICN was a complex process in which numerous factors played roles, one thing seems clear: the EU gradually realized 'a leadership gap' (Damro 2006a: 218-221), a gap between its self-image of global leader and the reality of limited success of its global competition rule initiative.

Standard-setting

The EU exports its competition regulation model to third countries and regions intentionally and unintentionally. An impact of EU laws is particularly visible in EU candidate states and neighbour countries (Cini and McGowan 1998: 207-212; Aydin 2012: 673-675). Competition laws are part of the *acquis communautaire* of the European Union. Therefore, EU membership cannot be obtained without aligning national competition rules with EU rules. For example, Turkey's competition law clearly resembles the EU's concerning monopoly, cartel and merger control (Wigger 2010: 187). The EU model also has had some impacts on competition laws of South American countries where the US traditionally exerts strong political and economic influence (Wigger 2010: 197).

Nevertheless, the structural power of the EU is limited with regard to global standard-setting. The main competitor for the Union here is again the US. Despite close cooperation and coordination, transatlantic divergence still exists not only in visions of international institutional frameworks but also in substantial and procedural issues of competition investigation. There are three pieces of evidence which show that the US is still more powerful than the EU. The first example of the diffusion of an American model is the cartel leniency programme. The DoJ of the US issued the Corporate Leniency Policy in 1993 and the Individual Leniency Policy in 1994. Since then, this idea spread rapidly through dozens of competition authorities. They include most developing countries such as all EU Member States except for Malta, the EU itself, Japan, Canada and Australia as well as some less developed countries.

The second benchmark case is transatlantic convergence in merger review. Traditionally, the EU approach to merger review was a legalistic, market-structure-focused approach, which was evident in the so-called Dominance Test for market analysis under former Merger Control Regulation (4064/89) in 1989. By contrast, the Substantially Lessening Competition (SLC) Test adopted in the US and some others puts more emphasis on the analysis of economic efficiency. In other words, large market shares of merging parties are not necessarily illegal in the US context because pro-market efficiency effects may outweigh anti-competitive impacts of a merger. This divergence at the substantial level has been one of the major sources of disagreements over politically sensitive trans-Atlantic cases. However, EU merger review is gradually shifting from the structural approach to microeconomic, efficiency-based analysis (Lyons 2009: 144-147). Merger Control Regulation (139/2004) in 2004, replacing the previous Regulation in 1989, takes the 'Significant Impediment of Effective Competition' (SIEC) Test as its criterion. As the name suggests, the new Regulation clearly shows a gradual alignment of the EU with the Anglo Saxon-style

efficiency-based approach, although the market structure remains important in EU merger review. At the ICN, this issue is nearly solved: the ICN Merger Working Group's Guidelines Workbook (2006: 4-12) recommends an efficiency-based substantial examination of market effects of mergers.

The third and much more general point which indicates American standard-setting power is the so-called 'micro-economization' of EU competition policy (Wigger 2006: 10-12; Christiansen 2005: 2-7). Traditionally, the European Commission and DG COMP had been dominated by lawyers rather than economists. This composition was reflected in their reasoning for rules and decisions. However, the weight of microeconomic reasoning is getting greater in the Commission decisions on competition cases. As a matter of fact, in 2003 DG COMP created a position of the Chief Economist whose responsibility is to enhance the quality of economic and particularly econometric analysis by the DG. The Chief Economist is supported by a number of high profile economics-PhD holders.

On the one hand, this micro-economization of DG COMP is partially an endogenous process within the EU. In 2002, there was an extremely unusual cases in which the General Court (Court of First Instance at that time) annulled the European Commission's prohibition of a proposed merger (Airtours / First Choice, Schneider / Legrand , and Tetra Laval / Sidel merger cases) (Cini and McGowan 2009: 138-139; Levy 2005: 107-108). In each of these cases, the GC harshly criticised the Commission's poor economic analysis as well as insufficient documentation. This series of events were striking because the European Courts had long been allies of regional integration for the Commission (Cini and McGowan 2009: 138-139). Reforms of DG COMP in 2003, namely the destruct of the Merger Task Force, a DG-wide reorganization for better enforcement, and the appointment of the first Chief Economist mentioned above, can be regarded as direct responses to the distrust from the judiciary.

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On the other hand, US influence is also non-negligible. At a general level, a particular type of neoliberalism in competition policy, the Chicago School which derives from American academia, is gradually changing European competition policies both at national and EU levels at least since the 1980s (Buch-Hansen and Wigger 2011; Gerber 1994). At a more specific level of regulation, the GC's harsh criticisms on DG COMP's investigative and analytical capacities in the the Commission v. GE case judgement in 2005²⁴ as well as the three decisions in 2002 (Airtours, Schneider and Tetra) have 'inspired a basic rethink of merger policy' and 'had the effect of pressing EU merger policy closer to US merger policy' (Kovacic: 2009: 333). There is no evidence that the US government and the GE intended to change the European Commission's merger review system *through* private law suits at the EU courts. Hence, the concept of relational power which assumes the intentionality of actors is not useful here. Only through a conceptual lens of structural power, an unintended consequence of the GE/Honeywell case becomes visible.

Yet, notwithstanding these pieces of evidence for considerable US structural power, it is safe to say that there is no dominant competition model up to the present. According to the American Bar Association's Report on the Internationalization of Competition Rules (2000, quoted in Raustiala 2002: 43), there seem to be clusters of nations adopting one (or a combination of) of major competition regimes, which include the EU model (followed by, for

²⁴ Judgement of the Court of First Instance on 14 December 2005 (Case T-210/01), paragraph 364.

example, EU neighbouring countries); US model (e.g. Mexico); a combination of them (e.g. some Latin American countries); Japanese or Korean model (East Asian countries).

Among numerous factors for policy diffusion, particularly relevant ones are perhaps the quantity and quality of technical assistance (the supply side) and adaptability of assistance receivers (the demand side) (See, for example, Nicholson et al 2006). Concerning the latter, for example, for those countries with civil law and immature judicial systems, the EU model with emphasis on administrative enforcement might be easier to copy and emulate than the US (and, less importantly in this context, the UK) common law model.²⁵ Yet, given the limited space, this section has mainly focused on results rather than causes and processes of institution building / standard-setting games. Thus, in order to sufficiently explain why the US is more powerful than the EU, at least we need to examine the complex, multi-level and mutually constitutive process of international policy diffusion – a theme which is large enough to make another article.

Conclusions and venues for future research

The present research has demonstrated the usefulness of the distinction between relational and structural power for the analysis of EU power in competition policy. The empirical evidence shows that the EU has a comparative advantage in relational power. The EU has considerable power toward companies including non-EU origin ones which operate inside the EU or export to the European market. Regarding inter-state relations, the EU exhibits increasing coherence. By contrast, in terms of structural power, the EU is still not as strong as the US. The latter continues to shape directions of competition policy enforcement and inter-governmental cooperation intentionally and unintentionally

As mentioned in the introduction, some people surprisingly state that the EU is a regulatory empire in competition policy. By now, it should be clear to the reader that such an assessment is erroneous at least for two reasons. Firstly, the EU is not an unchallengeable regulatory mammoth. This is evident particularly in terms of structural power. Secondly, we should not forget the EU itself is a particular set of multilateral regimes. The Union is also one of the main advocates of global, multilateral cooperation in competition policy as for many other policies. Similarly, the 'EU-US duopoly' (Wigger 2008: 197-199) is not the best expression to capture the reality of EU power in this field. What empirical evidence highlights is the unbalance between the relational and structural power of the Union.

An important recent trend is a seemingly tougher stance of the EU against Russia. In January 2011, Lithuania complained to the European Commission that European subsidiaries of Gazprom, a Russian energy giant, seemed to be abusing their dominant position in the natural gas market across Central and Eastern Europe. In the fall, the Commission even conducted 'dawn raids' (i.e. investigation without a prior notice) on these firms and collected relevant documents (Barry 2011). Moreover, on 4 September 2012, the European Commission opened a formal

²⁵ The author is grateful to Ms. Basje Bender for this point. See also Kovacic (2009: 317; 327-328).

proceeding against Gazprom itself (European Commission 2012 c). In retrospect, academic debate over EU competition policy in the last few decades probably put too much stress on visible, controversial transatlantic cases. So did the media. However, nobody seriously debates why the EU has *not* done much toward other geopolitically important partners, most notably Russia. Perhaps, we researchers have underestimated a common wisdom that ‘the silence of the dog’ might be a key to the truth. Nonetheless, it looks the situation is changing. Nowadays the Commission indicates its commitment to the strict application of EU competition laws to the gas and electricity industries. All in all, it is fair to say that how the EU confronts Gazprom would be a benchmark case for the further evaluation of the relational power of the EU.

Additionally, from theoretical perspective, at least two points remain to be scrutinized concerning actors and venues. While this paper has concentrated on ascertaining EU power in comparison with outside state actors, transitional actors such as professional organizations may also play a role in standard-setting. One important case would be the Antitrust Committee of the International Bar Association, which has abundant resources and expertise, actively publishes research materials, and organizes major conferences. As for actors, venues for networking are multiplying. They range from young ones such as the ICN, to those with long histories such as the Fordham Competition Law Institute’s Annual Conferences in New York on International Antitrust Law and Policy where leaders of top competition agencies among others gather.

Finally, it should be noted that this paper did not provide a comprehensive answer to the puzzle of EU efficiency with relatively limited resources. One possible solution for the EU is to transfer more and more cases to Member States competition authorities, as discussed above. It enables the Commission to focus on important and complex cases. A challenge here for the EU is how to assure consistency between EU level and national level enforcement. Internal, administrative restructure of DG COMP also matter (Lowe 2007: 30-41). Lastly, how the EU incorporates the civil society and civil society organizations into European competition governance is an important and big issue. The EU seems to expect them a stakeholder role: they are encouraged to make contributions to the European Commission’s continual public consultations, a system launched in 2001. At the same time, the EU attempts to improve private actors’ ability as whistle blowers. Admitting a very weak culture of private litigations in Member States, and recognizing a lack of incentives for individuals to sue at their own expenses, the Commission called for an establishment of EU rules on collective damages action (European Commission 2008a; 2005). Once such a rule is legislated at the EU level, groups such as businesses and consumers would enhance private enforcement, make anti-competitive business practices more costly, and therefore complement public enforcement.

In summary, a main contention of this article is that to better understand the global influence of the EU in competition policy, to recognize the asymmetry between relational and structural aspects of power is essential. From a European viewpoint, narrowing this gap by strengthening its structural power is the key for the EU so as to become a leading player on the world stage. Nonetheless, that is easier said than done. Given the Union’s ever-expanding tasks and ambitions in competition policy on the one hand, and the rigid EU budget and limited resources for DG COMP on the other hand, it is fair to conclude that the imbalance would remain in the near future.

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How does the ICN accommodate its increasing diversity? Putting benchmarking into practice

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Abstract

This article examines the way the International Competition Network (ICN) attempts to accommodate its increasing diversity within its overall framework of voluntary policy convergence promotion. A dilemma for the ICN is that the more successful its convergence endeavour is, the more diverse members it attracts. Drawing on recent publications of the ICN as well as secondary sources, this research identifies four strategies of the ICN for overcoming this challenge.

Among various causal mechanisms of policy convergence debated in the theoretical literature, benchmarking, a particular kind of transnational communications, characterizes the governance mode of the ICN. The author argues that, so as to achieve benchmarking among its increasingly diverse members, the ICN maximizes opportunities for information and experience sharing among its members, incorporates experts into the drafting of best practices, limits and prioritizes its agenda, and takes advocacy and capacity building seriously. This article also documents the partial alignment of ICN member jurisdictions' rules with non-binding best practices on merger review. While more comprehensive data is necessary to assess the actual impact of the ICN on national legislation, at least one may conclude that the Network is already more than a mere talking shop despite the absence of any binding rule. Nevertheless, since the ICN purposefully handled relatively easy areas in its first decade, the initial relative achievement vis-à-vis its own goals should not be over-evaluated.

Introduction

A recent striking development in public policies is an ever-growing number of competition laws and authorities on a global scale. In 1980, only 15 countries had comprehensive competition law, while more than 112 countries adopted it by the end of 2010, with at least 14 countries drafting legislation (Panitchpakdi 2010). In the mid-1990s, the weak and uncoordinated public control of anti-competitive business practices, even in developed countries, was widely regarded as an example of the 'retreat of the state' from the market (Strange 1996: 160). This perception underlines not only the unexpectedly rapid development of competition policies around the world from that time, but also the often underestimated importance of cross-national policy convergence.

In parallel with such dissemination of competition policies, there have been several attempts to multilateralize international competition cooperation since the end of the World War II. The ideas of multilateral competition cooperation arose mostly at trade-related international organizations such as the Organization for Economic Cooperation and Development (OECD), the United Nations Conference for Trade and Development (UNCTAD) and the World Bank. A significant exception is the International Competition Network (ICN), a competition-dedicated informal network. Launched in 2001, the ICN is already a crucial institutional component of multilateral global governance in this policy field. As a virtual network of competition officers, stakeholders and academics from a wide range of jurisdictions, the Network aims to facilitate networking and benchmarking for policy convergence among its members' affiliating authorities, be it national or regional. Its membership soared from original 15¹ to over 100 in less than 10 years.

While it is becoming common among practitioners and academics to refer to the ICN as a major and promising institutional framework for global competition cooperation, arguably the ICN, a rising venue, faces a dilemma: the more successful the ICN's convergence endeavour is, the more diverse members it attracts. In fact, as will be documented in the following parts, it seems that ICN members and its executive body, the Steering Group, recognize this challenge and search for remedies. It is therefore interesting to address the following research question: how does the ICN accommodate its increasing diversity within the overall framework of voluntary policy convergence promotion? Here *diversity* refers to (i) a wide variety of policy goals, scope, instruments and institutional settings² as well as (ii) various levels of expertise on and experience in competition regulation across jurisdictions. It should be noted at this stage that increasing diversity among competition systems is not necessarily a negative phenomenon³. Nonetheless, by definition, it would certainly make international policy convergence more difficult. Why policy convergence matters at all is a point which will be explained in the next section. In this article, as defined by Knill

¹ The founding members were competition agencies from Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States (Federal Trade Commission and Department Justice's Antitrust Division), and Zambia.

² Doern (1996a:24) identifies eight dimensions of policy systems for comparative analysis: the use of explicit non-competition criteria by competition authorities; ministerial discretion; pressures from other ministries; pressure by interests and their incorporation into governance; opportunities for private legal action; processes for giving guidance letters to parties; policy learning through media exposure and public communication; number and competence of competition institutions.

³ For example, Budzinski (2003: 11-18) argues that competition policy paradigms are and would remain diverse given the reality of pluralism in competition economics.

(2005: 768), *policy convergence* means ‘any increase in the similarity between one or more characteristics of a certain policy (...) across a given set of political jurisdictions (...) over a given period of time.’

A puzzle here lies in the relative success of the ICN at least in its initial phase. According to the existing literature on policy convergence, intervening variables which facilitate policy convergence are similarities in terms of (i) culture, (ii) economic development, and (iii) existing institutional settings (Holzinger et al 2008: 25). Interestingly, the ever-growing membership of the ICN across continents increases diversity among the members in all three aspects. At the same time, there is some empirical evidence of competition policies alignment with ICN best practices (Coppola 2011; Coppola and Lagdameo 2011; Fox 2009). In short, this counter-intuitive combination of growing diversity, soft implementation mechanism, and a relative policy achievement makes the ICN an intriguing case for the study of policy convergence.

The argument of this research is threefold. Firstly, the ICN takes four strategies to achieve policy convergence among its increasingly diverse member authorities: maximization of opportunities for information and experience sharing; incorporation of experts into the drafting process of best practices; emphasis on advocacy and capacity building; careful selection and prioritization of agenda. Secondly, the author argues that despite the purely voluntary nature of all ICN products, there is some evidence of gradual convergence among its members toward ICN Recommended Practices on merger review. Thirdly, such a relative success of the ICN in its initial phase is significant but should not be over-emphasized. Since the Network initially selected relatively easy tasks, it could face difficulties in agreeing on additional best practices.

Theoretically, this article draws on the literature on policy convergence in the study of comparative public policy. It will be argued that among various mechanisms of convergence, benchmarking - a sub-category of transnational communication - is the most relevant one to capture the nature of ICN governance. The following discussion will refer to various publications of the ICN as well as secondary sources. In particular, ICN documents published since 2011 are of great importance because the Network has conducted research on itself to take stock of its experience in the first decade.

The structure of this article is as follows. The next section will provide background information concerning the ICN. It also explains why convergence on a multilateral basis matters for both competition authorities and the private sector. Section II will present a theoretical framework, namely the theories of policy convergence. Since there are various mechanisms of policy convergence, this article identifies what ICN convergence efforts are and what they are not. After setting the scene in this way, the third section will answer the research question by investigating the way the ICN promotes policy convergence. Next, based on this empirical analysis, this article will measure ICN’s impacts on national legislation in merger review, and critically examine a view that the ICN would or should transform into a legislative body in the future. Conclusions shall summarize, integrate and evaluate theoretical and empirical parts of this article.

I Background: the ICN and multilateral policy convergence efforts

To understand the relevance of the ICN is to understand the importance of *policy convergence* on a *multilateral* basis in competition policy. Firstly, this section provides background information about the ICN concerning historical context and major activities. Secondly, it explains why policy convergence particularly in a multilateral form matters in this field – which is by no means obvious. Without this analysis, interests of public and private actors would be left in a black box when we discuss the governance of the ICN and its challenges.

The ICN – its contents and context

The International Competition Network is a programme-oriented virtual network, which was established in October 2001 by 15 competition agencies from 14 jurisdictions. It does not possess a permanent address, a letter head or employees (permanent secretariat)⁴. Above all, it lacks legal personality. In addition to such informality, voluntarism is a major feature of the ICN. As a matter of fact, the ICN has nothing to do with the making of binding international rules. Rather, aiming for voluntary convergence to superior substantial and procedural regulatory standards for competition policy, the ICN facilitates experience-sharing among authorities, and issues various documents (ICN 2001: 1; 2012: 5). Such informal arrangement largely derives from a recommendation from the International Competition Policy Advisory Committee (2000) appointed by the US Department of Justice. In addition, the ICN supports competition advocacy and attempts to facilitate inter-governmental cooperation (ICN 2001: 1; 2012: 5).

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While the ICN is much younger than the OECD, the UNCTAD and the WTO, the former has rapidly emerged as a key venue for international competition cooperation in one decade. In fact, by the beginning of 2012, its membership reached as many as 123 agencies coming from 108 jurisdictions (ICN 2012: 3). Together with such enlargement, ICN activities are becoming broader and richer. The most important kind of publications by the ICN is Recommended Practices, which are sometimes called best practices. Other main activities of the Network include annual conferences, working group discussion and supplementary workshops as well as tele-seminars. From the very beginning, these activities are open not only to national and regional competition officers, but also to so-called ‘non-governmental advisors’: individuals from private sectors, consumer groups, international organizations, academics, and professional (i.e. law and economics) companies or associations (ICN 2001: 2).

In short, the ICN is an innovative, bottom-up project for competition practitioners with special emphasis on voluntary policy convergence toward best practices. Other objectives such as advocacy, capacity-building and facilitation of international cooperation are important and complementary to the overall goal, but remain secondary. At first sight, the convergence of national and regional procedures, let alone substantial techniques, may look uncontroversial and unimportant. However, it is in reality essential to minimize a risk of inter-governmental conflicts and various costs of transnational business activities both for public and private actors.

⁴ The ICN mostly relies on its members’ financial contributions. For example, hosting countries rather than the ICN bear costs of annual conferences (ICN 2001: 4).

Why convergence matters

In general, competition laws have not developed enough to match the reality of international business activities. On the one hand, the legislation and enforcement of competition laws remain, to a great extent, nationally divided outside the EU. On the other hand, business activities are becoming more and more transnational at both regional and global levels. It is the tension between these two opposing forces which creates demands for international cooperation on the competition issue. In this context of increasing demands, national and regional competition agencies have been pursuing intensified cooperation particularly in the last two decades.

Competition laws vary significantly at the level of substantial analysis as well as procedures. For instance, some authorities put emphasis on the *abuse* of market dominant position for the analysis of monopoly, while others regard market dominance itself as problematic. In some countries, hard-core cartels are illegal *per se*, but they are not in others jurisdictions. These differences mainly come from different policy objectives. Typical goals of competition policy are economic efficiency; consumer protection; the redistribution of wealth; the protection of small and medium-sized enterprises; regional, social and industrial considerations; the facilitation of regional economic integration; the promotion of competitiveness, and so forth (Cini and McGowan 2009: 4-5; see also Motta 2004: 18-30). Given the reality of such divergent objectives and subsequent divergent policy instruments, the governance method of mutual recognition would be unacceptable for the international community. This is why convergence comes to front as a major response to growing inter-jurisdictional frictions.

Without convergence, both regulators and the regulated would face various costs and risks. A shortage of coordination among competition authorities would result in uncertain environment for transnational businesses. They would bear extra costs due to cross-national procedural differences. Hence, companies prefer a 'one-stop-shop' competition regime. Convergence even in seemingly simple areas such as the length of merger review and cartel investigation techniques could easily reduce such costs. From the regulator's perspective, procedural compatibility significantly contributes to inter-agency cooperation such as simultaneous investigation to cartel members and monopolists.

National discrepancy also leaves room for manipulation by enterprises. For example, a multinational company may notify its cross-border business activity first at a competition authority which is most likely to approve the notification, and then proceed to other authorities concerned. In such situation, a decision by the first authority may affect following decisions by others. Outcomes of such forum-shopping by firms are unpredictable and could increase legal uncertainty.

There is another rationale for policy convergence, which is specific to economies with stringent competition policies. Economists Dewatripont and Legros (2009: 89-90) make a threefold argument about the international implications of competition policy. Firstly, competition policy has not only 'internal effects' (improvement of economic efficiency in the domestic market), but also negative 'external effects' (loss of international

competitiveness of domestic firms due to restriction / prohibition of monopolistic power). Secondly, while developed countries have sophisticated competition regulatory systems, less developed countries generally prioritize industrial policy. Thirdly, given these two points, developed countries have incentives to promote competition policy in less developed countries so as to minimize the potential negative external effects of their own domestic competition regulation.

Why multilateralism matters

Even if we accept that convergence is significant in competition policy, it is still not obvious why multilateralism is also important. Multilateralism matters in competition policies convergence for three major reasons. Firstly, problem-solving capacities of individual states are largely insufficient in the current globalized economy. A typical problem which can be best dealt with is market-sharing. Market-sharing is a classic cartel strategy of companies to set and maintain high prices, and make excessive profits. A certain market may be divided geographically and allocated to cartel members. Those members agree, often informally, not to enter other members' areas so as not to cause competition. Since overseas business practices are difficult to investigate for various technical and legal reasons, competition authorities often fail to detect and terminate such conducts. One response to such private manipulation of markets is the extraterritorial use of competition law. In fact, extraterritoriality doctrine eased some problems including combats against market-sharing and other cross-jurisdictional restrictive practices. However, it proved to cause new problems at the same time (Fox 2001: 359-360). For example, differences in substantial testing of mergers result in contradictory decisions by competition authorities at times.

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The second major factor which has contributed to international competition cooperation is the spread of increasingly sophisticated international anti-competitive business practices. Take an example of cartel control again to demonstrate why inter-agency cooperation is of great importance. It is well known that some multinational corporations manipulate nationally divided competition rules and gain benefit by international cartels. Those companies typically make use of communication tools such as informal meetings and emails to make investigation difficult. In order to ensure no cartel member confesses their illegal conducts to regulators in pursuit of penalty immunity, a cartel leader may set up a monitoring system. Also, micro-economics has proved that cross-sector cartels (multimarket contact) are more consolidated than single-sector ones because breaking a cartel agreement in one area might trigger counter-measures in all other areas (Bernheim and Whinston 1990).

In response, states employ numerous measures to deter, detect and sanction cartels. Those measures include sophisticated econometrics to identify and prove cartels; 'dawn raids' (investigation without beforehand notice); high penalty fees; criminal sanctions if domestic laws allow; the leniency system in which 'whistle blowers' obtain total or partial exemption from penalties; promotion of private enforcement; (e.g. giving consumer and business organizations rights to litigate collectively on behalf of damaged individuals). Nevertheless, all those attempts are arguably ineffective until international cooperation facilitates inter-agency information exchange, even if there are confidentiality rules, and simultaneous or coordinated initiation of investigation.

Thirdly, the relative importance of multilateralism is increasing as bilateralism gradually has turned out insufficient. Above all, transaction costs of bilateral negotiation are enormous because, unlike on-the-border economic issues, international negotiation on competition often involves domestic legislative changes (see the US-Japan Structural Impediments Initiative below). By contrast, multilateral cooperation not only reduces such transaction costs, but also facilitates trans-governmental experience-sharing, cross-national policy learning and possibly the promotion of best regulatory practices on a wide scale⁵.

Summing up, the ICN has emerged to enhance the convergence of competition policies on a multilateral basis. Without a significant degree of convergence, both regulators and the private sector would bear unnecessary costs and face legal uncertainty. Acknowledging the importance of convergence, the next section will overview theories of policy convergence in comparative public policy and apply them to the competition issue.

II Theories of policy convergence

Policy convergence as a *concept* is sometimes used as a synonym to similar ones such as policy transfer and policy diffusion. Yet, the analytical focus of policy convergence is effects (increase or decrease in similarity over time), while the other two are mainly about processes (adoption patterns) (Knill 2005: 765). For example, 'diffusion without convergence' is possible because diffused ideas might be adopted and contextualized in various ways according to local political contexts (Radaelli 2005: 927)⁶. Policy convergence as a *theoretical framework* accommodates various accounts for the causes of convergence. This is why we researchers should be explicit about the type of convergence we talk about. According to the existing literature, there are five major mechanisms of cross-national policy convergence, namely, independent problem-solving, imposition, harmonization by binding international law, regulatory competition among jurisdictions, and transnational communication (Holzinger, Knill and Arts 2008: 22). Each of the five can be briefly illustrated with examples from the international dimension of competition policy (See Table 1 below). This exercise is essential to better understand what ICN activities are and what they are not.

Five mechanisms of policy convergence

Firstly, policy convergence may happen as a consequence of separate governmental efforts to the same, pervasive problem. One example of this independent problem-solving is the issue of extraterritoriality mentioned above. The

⁵ There are additional specific reasons, while they are less relevant in the argument of this article. Large economies with mature competition authorities may regard multilateral competition forums as an opportunity to set global standards according to their own preferences, while small economies and developing countries may prefer multilateralism being afraid of disadvantaged in bilateral negotiation with larger economies (Doern 1996b: 307-309).

⁶ The ever-growing literature on Europeanization is a classic example of process-oriented research agenda. A majority of researchers agree that regardless the dimensions of change (polity, policy and politics), Europeanization should be analytically distinguished from convergence (for example, Börzel 2005: 61). In fact, there are already numerous empirical works which illustrate Europeanization of states without convergence. See for example Green Cowles and Risse (2001: 236-237); Ladrech (2010: 12-13).

Table 1: causal mechanisms of policy convergence

Causal mechanisms	Examples in competition policy
1 Independent problem-solving	Unilateral extraterritorial application of competition law
2 Imposition	US-Japan Structural Impediments Initiative
3 International harmonization	Failed attempt of rule-making at the WTO
4 Regulatory competition	'Race to the bottom' in the regulation of export cartels
5 Transnational communication	Networking and benchmarking at the ICN

Source: For the left row, Holzinger, Jörgens and Knill (2008: 22).

US Supreme Court's Alcoa judgement in 1945 introduced the effects doctrine into US antitrust law and policy. The effects doctrine means that domestic competition law can be (or should be) applied extraterritorially when business activities outside its jurisdiction, be it its nationals' or foreigners', do harm directly and considerably on the domestic market. Later, West Germany and the EU also established legal basis for extraterritoriality through case law in a similar way (Gerber 1983: Cini and McGowan 1998: 201-202). A fact that the extraterritoriality doctrine did not go beyond the US for decades indicates that states mostly accept this concept in individual responses to cross-jurisdictional cases they face.

Secondly, a state may impose certain types of competition policies on other states. As already indicated in the previous section, states with rigorous competition policies have an economic incentive to encourage other states to provide at least a comparable level of regulation. It is not rare such 'encouragement' comes in a coercive way taking advantage of political and economic leverage. A good example here is the Structural Impediments Initiative (SII) which is trade-plus negotiation between the US and Japan from September 1989 to June 1990. While the previous bilateral negotiation, the MOSS (Market Orientated Sector Specific) (1982-1988), concentrated on traditional market access issues, the SII went further to discuss domestic market regulation and private business conducts. On the one hand, the Japanese government requested the US to improve its macro-economic conditions, especially a growing fiscal deficit. On the other, Japan agreed on several recommendations from the US including the empowerment of the competition authority, Japan Fair Trade Commission (Sekiguchi 1993: 49-50)⁷.

Thirdly, international harmonization forces states to align their legislation with international or supranational laws. This is what the WTO Working Group on Competition and Trade aimed for. The competition issue reached agenda at the Singapore ministerial conference in 1996. The so-called Singapore issues, namely trade and investment, trade and competition, public procurement, and trade facilitation (simpler trade procedures) all go beyond a traditional understanding of on-the-border trade policy. Former European Commissioner for Competition Sir Leon Brittan was

⁷ Japan Fair Trade Commission indeed employed more staffs, conducted organizational reforms and established severer sanctions including both pecuniary and criminal ones. Yet, contrary to US recommendations, The Japanese government did not completely forbid the alleged unfair business practice, namely the exclusion of non-members from trade with and manufacture and trade groups (Sekiguchi 1993: 50).

one of the most active promoters of binding multilateralism at the WTO. Specifically, he listed four potential points for negotiation (Brittan 1999: 4-5): commitment to progressive domestic legislation on competition; agreement on core principles of transparency and non-discrimination; provisions on cooperation procedures such as positive comity rules; gradual convergence, if not harmonization, in selective areas such as hard-core cartel control. The EU plan even included the application of the dispute settlement system to competition rules. Nevertheless, this EU initiative did not gain much support from other WTO member states and was abandoned at the Cancun ministerial conference in 2004 (for the failure of competition rule-making at the WTO, see Bradford 2007).

Fourthly, regulatory competition is a market-driven process of convergence. An analytical focus of the debate over regulatory competition is the *direction* of convergence. While some researchers hypothesize convergence to the lowest common denominator (also known as 'race to the bottom' or 'the Delaware effect') between states due to transnational market forces, others provide some empirical evidence of convergence to the highest common denominator ('race to the top' or 'the California effect') (Vogel 1997; Murphy 2004; Sebastiaan 2003). This theoretical and empirical debate has gained popularity particularly in the study of environmental policies. While those theories of regulatory competition are less relevant in competition policy, downward competition logic may underline the issue of export cartels (Fox 2006: 355; Jacquemin 1993: 96).

Last but not least, transnational communication may also enhance cross-national policy convergence in several ways. Since transnational communication seems the most relevant convergence mechanism concerning the ICN, we shall unpack this conceptual tool in the next section. Yet, before that, it should be explained why the other mechanisms are irrelevant to the study of the ICN. Above all, the ICN denies any effort or ambition of binding rule-making. Therefore, the logic of international harmonization does not apply to the ICN. It is also worth reminding that the regulatory competition argument is useful in explaining the *direction* of convergence. Nevertheless, since the very beginning the Network takes a benchmarking approach to policy convergence. By definition, benchmarking means the facilitation of the race to the highest standard. Therefore, a more relevant theoretical issue relating to the ICN is the *degree* of convergence, or the reasons best practices may be implemented without monitoring and sanctioning systems. We shall come back to this topic shortly.

Benchmarking as a distinctive type of transnational communication

There are four sub-categories of transnational communication, namely lesson drawing, transnational problem-solving, emulation and international policy promotion (Holzinger, Knill and Arts 2008: 42). These four mechanisms of transnational communication, presented in Table 2 below, are not mutually exclusive. Also, in reality a particular policy programme may enhance more than one of the four patterns of transnational communication. ICN activities can be categorized into two categories using this framework. Firstly, the ICN serves as a networking facilitator. Analytically, this function would encourage information exchange and experience-sharing among policy-makers and transnational actors, and therefore enhance lesson drawing and emulation across jurisdictions. Yet, the second,

overall goal subsumes this objective of networking. The primary goal of the ICN - the identification, adoption and publication of best practices best fits to the category of international policy promotion or benchmarking.

Table 2: Mechanisms of policy convergence through transnational communication

	Mechanism	Incentive	Response
1	Lesson drawing	Problem pressure	Transfer of model found elsewhere
2	Transnational problem-solving	Parallel problem pressure	Adoption of commonly developed model
3	Emulation	Desire for conformity	Copying of widely used model
4	International policy promotion	Legitimacy pressure	Adoption of recommended model

Source: Holzinger, Jörgens and Knill (2008: 42)

Benchmarking is not identical to lesson drawing and emulation between certain pairs of states. It is a method of governance which promotes superior policy models through 'legitimacy pressure' (Holzinger et al 2008: 47-48): governments may copy a certain model because an actor –often but not exclusively an international institution – promotes it as the best one based on cross-national / regional comparison. Best practices serve not only a 'pressure', but also as an 'opportunity' for competition authorities. A fact that those practices are internationally acknowledged helps competition authorities promote those rules in their own jurisdictions vis-à-vis other governmental bodies.

Frequent and abundant exchange of information and ideas is a necessary condition for the convergence through transnational communication. Promoters of internationally recognized benchmarks are in many cases international institutions embedded in transnational epistemic communities (Haas 1992) or advocacy networks (Keck and Sikkink 1998). While epistemic communities or groups of experts provide expertise, advocacy networks mainly give popular supports to activities of international institutions. In other words, the level of transnational communication is by no means restricted to the most senior governmental officials representing their jurisdictions. Rather, transgovernmental and transnational interactions are common across various issues ranging from environmental control to securities regulation (Slaughter 2004: 172-177).

While there are various theoretical approaches to the study of policy convergence, one thing they all have in common is scepticism to cultural determinism. Before proceeding to empirical analysis, it should be clarified why this article is cautious to the over-emphasis of cultural accounts. Page (1999: 445) argues that in non-western countries, certain typical characteristics play a pivotal role in their concept of competition: in particular, historical factors (e.g., in Asia), religion (Islamic countries), ideological changes (former-communist countries), and economic upheavals (developing countries). For example, according to this line, Asian countries with Confucianism traditions are tolerant

to ‘cooperation’ among businesses. Cartels and vertical business networks with mutual stake-sharing (*keiretsu*) are understood as ‘mutual help’ rather than conspiracies.

On the one hand, it is true that different countries use competition policy for different purposes. Besides, states often make compromise with neighbouring policies such as trade and industrial policy, research and development policy, and environmental policy. On the other, the abovementioned culture- and ideology- oriented argument over-emphasizes cross-national and cross-regional differences. It cannot capture the reality of rapid policy development in non-western countries such as Japan and South Korea in the last few decades. For example, in 2010, a total amount of penalty fees on cartels imposed by Japan Fair Trade Commission was the third largest around the world only after the European Commission and Brazil (Global Competition Review 2011: 18). Nor does it explain why all BRICS countries, emerging powers with diverse cultures and political contexts, are currently strengthening and modernizing their competition law. Therefore, serious debate over comparative competition policy should go beyond the deterministic cultural explanation.

Drawing on the existing literature which identifies five mechanisms of policy convergence, the author has argued in this section that different issues within the competition policy involve different mechanisms of convergence. This intellectual exercise has clarified characteristics of core ICN activities using concepts in comparative public policy. Now we proceed to the specific policies of the ICN.

III Accommodating diversity: limited scope, extensive networks

The ICN accommodates public members with highly diverse rules because of its very attractiveness. The working method of the ICN falls into the category of international policy promotion or benchmarking in theoretical terms. Since the discussion here flow from theoretical debate to empirical analysis, what the theory of convergence tells us and it does not should be clarified. According to the theoretical framework, (i) an extensive exchange of information, knowledge and ideas is a pre-requisite for effective convergence through transnational communication such as benchmarking. In addition, (ii) to make ‘best practices’ really best, it is crucially important to incorporate experts into policy debate and embed the standard-promoting institution into an epistemic community.

For an identification of other specific strategies of the ICN – to be precise, its Steering Group and co-chairs of Working Groups - in face of pluralism in competition systems, the documentation of various ICN products is essential. Arguably, the ICN absorbs its increasing diversity in four ways. Firstly, the ICN maximizes opportunities for information exchange and experience sharing among its members. Secondly, it incorporates trans-governmental advisors so as to make best practices credible. Thirdly, it carefully excludes politically sensitive issues and prioritizes areas within selected agenda. Last but not least, the Network puts stress on advocacy and capacity building from the outset, and is reinforcing this effort in the last few years.

Maximizing interactions

In a quantitative sense, most day-to-day activities of the ICN are about information and experience sharing. Members of the Network frequently exchange emails and phone calls on a bilateral basis. There are also online-video seminars on various issues. One source reports that approximately 90 per cent of interactions among the members are indeed conducted by email and telephone conferencing (Damro 2006: 146). ICN Blog and Bulletin Board are utilized for posting latest news about ICN activities. Because of the project-oriented nature of the ICN, it is not easy to recognize and follow its all publications. Therefore, the Product Catalogue is downloadable on the ICN website. Templates are also important for information pooling. First, Working Groups coordinators distribute templates to public members. Then, the latter fill in requested information about statutory and administrative rules of their home country. Finally, those documents are uploaded to the website so that all members can access it. In these ways, the ICN makes great efforts to encourage and smoothen inter-member interactions.

Incorporating experts into the drafting process

In principle, the ICN attempts to incorporate as many stakeholders as possible. The inclusion of professionals (most importantly, economists and lawyers) and academics makes sense because drafting credible best practices is virtually impossible without expertise. This point is particularly important in competition policy because effective competition regulation requires expert knowledge on competition law, micro-economics (especially econometrics) and market structures in specific cases. Other participants such as business groups and consumer groups are also important members representing specific interests. They do not necessarily have less expertise than professional and academic members. Nevertheless, the private sector and consumers are more relevant to better inclusiveness rather than expertise. The creation of a NGA Liaison position in 2009 suggests continuing commitment of the ICN to wider membership both in terms of professions and geographical reach (Coppola 2009: 19). Almost the only limit on the membership is that public members should be mainly engaged in competition policy rather than other policies, for example international trade and development.

To discuss or not to discuss: restrictive agenda

ICN selects and prioritize its agenda carefully. Currently, there are five Working Groups at the ICN: (i) advocacy (founded in 2001), (ii) agency effectiveness (2002, formally Capacity Building and Competition Policy Implementation), (iii) cartels (2004), (iv) mergers (2001) and (v) unilateral conduct (2009). There is also an Advocacy and Implementation Network Support Programme (2008: previously 'Support System'). The ICN's pragmatism is evident in its prioritization, or more specifically two-speed strategy. As the ICN's Vision for its Second Decade (ICN 2011: 5-6) explains, in areas where differences are relatively narrow, such as leniency programmes and merger review periods, the ICN seeks for publication of Recommended Practices and Guidelines in conjunction with national competition agencies. By contrast, in areas where differences are greater such as the analysis of unilateral conduct,

‘the ICN facilitates ‘informed divergence’: identifying the nature and sources of apparent divergence and understanding and respecting any underlying divergent rationale’ (ICN 2011: 6).

The selectiveness of agenda is also noticeable. First of all, any international harmonization effort was and remains off the table. It should be reminded that the ICN solely relies on voluntary domestic implementation of agreed best practices by member authorities. Nor does it have dispute settlement mechanisms. Similarly, the ICN does not bring up controversial issues such as export cartels, which were mentioned above. The WTO Working Group discussed it, but it soon proved a highly sensitive and controversial topic because of the beggar-thy-neighbour-policy nature (Bhattacharjea 2004).

Themes raised for new work for the ICN’s second decade have a wide range. Those which were mentioned by at least two ICN public members included training and educating agency staff; evaluating/assessing the impact of competition enforcement; efforts on consumer welfare (partly for use as an advocacy tool); sector-specific work (e.g. banking, insurance, telecoms); work more closely with the judiciary / engage in outreach to judges; work on economic analysis (including the use of econometrics). Topics which are specific to large states are not in this list. For example, private litigation, which is quite active in Anglo-Saxon countries, does not come up to main discussion. Yet, this does not necessarily mean that less developed countries have agenda-setting power in proportion to their numbers. Take an example of ICN working groups’ co-chairs⁸, who may influence and frame workshop specific topics. Among 15 seats in total for five working groups, developed countries / region occupy 11. Given that the majority of ICN public members are now from developed countries, this composition is not proportional.

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It is also worth recapitulating here that the level of convergence in those areas is practical techniques rather than general norms. Eleanor M. Fox (2006: 290-291) observes, ‘the dominant international antitrust conversation has shifted from concepts of cosmopolitan world principles to practical details (e.g. timing of merger filings), cross-fertilization and slow evolution of common norms’ over time. ICN products are by no means value-free. They refer to ‘big norms’ such as transparency and fairness indeed (ICN 2002), but they mostly do so in specific contexts, particularly in discussion about regulatory procedures.

Strengthening each other domestically

It should be highlighted that the issues of advocacy and capacity building have been at least as important as other substantial themes in the ICN from the very beginning. Particularly, it is noteworthy that, together with merger regulation, they constituted one of the two pillars of the first and second ICN Annual Conferences. It means that those issues came up to agenda earlier than typical competition topics such as cartels and monopoly (which is called unilateral conduct in ICN terms).

⁸ Composition of substantial Working Groups’ co-chairs at the time of 2012 is as follows: Advocacy: France, Mauritius, Portugal; Agency effectiveness: Mexico, Norway, US; Cartel: Japan, US, Germany; Merger: Italy, DG COMP of the EU, India; Unilateral conduct: Sweden, Turkey, UK.

The great importance of advocacy and capacity building is a not original but distinctive feature of competition cooperation. The majority of jurisdictions ICN members belong to did not have competition laws until the 1990s. Given such short histories of competition regimes, advocacy vis-à-vis the public and the media, and capacity building are essential for effective enforcement. At the Tenth Annual Conference, the Curriculum Project was launched for capacity building. This Project is under supervision of Vice Chair for Outreach, and produces various training modules which consist of a combination of video lectures, slides and final exams. At the ICN Annual Conferences in 2011 and 2012, a total of eight modules were released. Module topics include market definition and market power, to name a few.

In addition to public advocacy, advocacy toward non-competition governmental departments is equally significant for competition authorities. Pro-competition rules are often in conflict with interventionist measures such as research and development policy, regional policy and employment policy. This is why advocacy policy has potential to enhance the autonomy of competition policies in relation to neighbouring policies, and foster a basis for cross-jurisdictional policy convergence. As discussed in the theoretical part, the legitimacy of internationally recognized best practices is not only a pressure but also an opportunity for competition authorities. In fact, there are several pieces of evidence that ICN members have used ICN Recommended Practices to convince the legislative bodies that proposed reforms are reasonable and favourable (ICN 2012: 14). For instance, German and Irish competition authorities have cited ICN Recommended Practices on mergers in their official documents so as to demonstrate that reforms they are proposing are in full conformity with international standards. Similarly, numerous competition authorities such as those in Belgium, Brazil, Finland, Mexico and Portugal used the Recommended Practices for the promotion of legislative reforms.

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To sum up, this section has attempted to give an answer to the main research question, that is, how does the ICN accommodate its increasing diversity within the overall framework of policy convergence promotion? Taking into account the theoretical literature on benchmarking as well as competition issue specific factors, this part has identified, illustrated and documented four strategies of the ICN to accommodate variety among its members. While this intellectual exercise has its own value, we would be still left with a 'so what' question unless the ICN best practices have at least some real impact on convergence. Thus, the next part is devoted to discussion over the degree of policy convergence among ICN member authorities.

IV The degree of convergence: a critical evaluation

While the previous section put emphasis on the scope of convergence, here we turn to the analysis of the degree of convergence. To recapitulate the argument so far, there are favourable conditions for ICN's convergence-through-benchmarking efforts: extensive information and experience exchange; focus on relatively less divergent areas; incorporation of experts into the drafting of best practises; technical assistance and advocacy mainly to less mature authorities. Nevertheless, an actual degree of alignment with benchmarks is a matter of empirical analysis. Quantitative data provide us an overall picture, while country-specific legislative changes would illustrate and

complement that general argument. This part will also critically assess a prescriptive evaluation of the ICN in the literature saying that the Network would and should become a legislative body.

Some concrete evidence of ICN impacts

ICN publications are the most extensive in the field of merger. In fact, 13 Recommended Practices were agreed on a unanimous basis and published in a short period of 2002-06. They cover major areas such as notification thresholds, timing of notification, and substantial analytical methods. In total, there are 13 recommended practices about merger notification procedures and eight more about merger analysis⁹. The Merger Working Group conducts survey for implementation assessment and a better quality of work products. According to this Working Group's report in 2010 (ICN 2010: 30), 35 agencies (65% of all 54 respondents) answered that they had already changed their merger rules based on the Merger Working Group's products.

Coppola (2011: 225) also provides first-hand quantitative data concerning convergence in merger rules¹⁰. For example, among 87 ICN members with merger control regimes, 44 jurisdictions are currently in conformity with Recommended Practices on Review Periods. 27 out of these 44 conducted reforms which brought them into compliance with the Practices. With regard to the Recommended Practices on Thresholds, 39 members have rules in line with this recommendation. 18 out of this 39 jurisdictions experienced reforms, while 21 had ICN-compatible rules from the beginning.

ICN State of Achievements 2001-2012 (2012: 13)¹¹ gives examples of ICN merger products impacts on members. These examples are important in a sense that their changes are with no doubt attributable to ICN publications as they voluntarily announce such influence. Reportedly, the Czech, Swedish, and Finish agencies used the Recommended Practices when they conducted reforms to merger thresholds. Colombia and Costa Rica have relied on the Recommended Practice on review periods to design their reforms to their procedural rules. The State of Achievement also indicates ICN Recommended Practices' influence on non-members (ICN 2012: 13): 'when a draft Chinese antimonopoly bill was circulated, many agencies and bar associations urged the Chinese government to adopt merger rules consistent with the ICN Practices. Changes in successive drafts of the antimonopoly law reflected many of these comments'.

In contrast to the merger, impacts of the ICN are not clear in other areas. First of all, there is little comprehensive data about domestic implementation of ICN recommendations outside mergers. Secondly, the majority of working groups are still at the experience-sharing stage rather than the model promotion stage. An interesting area which seems in transition between these two stages is the Unilateral Conduct Working Group. This Working Group have adopted two sets of recommendations, namely Recommended Practices on the Assessment of Dominance /

⁹ While they are updated relatively frequently, the latest versions are available online (ICN: no date).

¹⁰ See also Coppola and Lagdameo (2011: 300-303) for details concerning members' conformity with ICN merger recommended practices.

¹¹ For further country cases, see ICN (2005: 5-6).

Substantial Market Power, and Recommended Practices on the application of unilateral conduct rules to state-created monopolies. Although this is already a progress, there is not sufficient data about national alignment with those recommendations. At least one can say that future consensus-building on specific monopolistic business conducts is not an easy task. For example, the Unilateral Working Groups' Report on Predatory Pricing underlines different views of members (ICN 2008: 31-43).

In short, there is modest convergence toward ICN merger best practices. By contrast, other areas such as monopoly / unilateral conduct are still in the experience-sharing stage or in transition to the benchmarking stage. Therefore, in these areas, it is possible to assess ICN activities in terms of output, but it is difficult to assess them in terms of impact on national rules at this moment. This short evaluation of ICN impacts is far from comprehensive. Yet, one can at least say that the Network is already more than an impactless 'talking shop' as it is often caricatured as.

Reflection on a prescriptive ICN-transformation argument

Some researchers assess those partial achievements of the ICN in a prescriptive way. According to them, ICN recommendations are still too soft for global governance on competition. They even recommend the ICN make obligatory rules in the near future. For example, Clarke (2006: 39-40) argues that '[f]ormal agreement on procedural convergence is not only desirable, it is a realistic means by which the regulatory burden currently experienced might be mitigated'. According to Hollman and Kovacic (2011: 90), with the gradual international convergence achieved so far, we 'would expect that the ICN network can continue to serve as a vehicle... for developing consensus positions that become the platform for a progression that begins with voluntary opting in and may extend to binding commitments'. Did the ICN accept those pieces of suggestion, it would mean the abandonment of the abovementioned strategy to accommodate diversity, namely restricting agenda. Thus, it is worth reflecting on those comments here based on the empirical evidence presented above.

Behind these prescriptive comments probably lies persistent scepticism to soft law in international law studies. A common critique from this perspective is that soft law results in soft implementation. At best, soft law is meaningful as long as it works as a stepping-stone to hard law (Dehousse and Weiler 1990)¹². However, such a metamorphosis scenario for the ICN is highly unlikely for four reasons. First of all, the failure of competition rule-making attempts at the International Trade Organization and the WTO are by no means forgotten by policy-makers. In particular, the historical context in which the ICN emerged as an alternative to the WTO Working Group on Trade and Competition is crucial (See Souty 2011 for the origin of the ICN).

Secondly, the ICN asserts that it continues to stick to its original approach based on informality and voluntarism. As its Steering Group members concisely stated at the 10th annual conference at Hague, goals of the ICN remain the same since its birth: the Network aims 'to advocate the adoption of superior standards and procedures in

¹² There is an alternative view which regards soft law as a distinctive method of governance. From this perspective, soft law is an alternative to hard law. For a critical overview of these two contrasting streams, see Cini (2001: 193-196).

competition enforcement and policy around the world, formulate proposals for procedural and substantive convergence, and seek to facilitate effective international cooperation to the benefit of member agencies, consumers and economies worldwide' (ICN 2011: 4-5).

Thirdly, there are already some concrete ICN outputs and, moreover, some evidence of their impacts on domestic rules. This partial achievement of goals in the first decade seems to have reinforced rather than weakened ICN member's confidence in its soft law approach, as documented just above. Lastly, the ICN would continue to enlarge and welcome even more members. This is partly because of the attractiveness of the ICN. Besides, inclusiveness is an identity of the Network given potential competition with other international institutions such as the OECD and the UNCTAD. Especially, the OECD takes a similar approach of non-binding best practices. Therefore, the ICN is unlikely to adopt a harder governance mode, which is incompatible with its spirit.

All in all, even if we accept a fact that soft law tends to result in hard law in general, the ICN-with-hard-law hypothesis is seriously flawed. The indications of convergence among members strengthened ICN belief in its various strategies to accommodate increasing diversity, and soft law in general.

Conclusions

The present article has done two intellectual exercises. Firstly, it applied convergence theories to the competition issue and demonstrated how different topics within the issue concern different mechanisms of policy convergence. It was also argued that the goals of the ICN are by definition networking and benchmarking, which are particular kinds of transnational communication. Secondly, this article has attempted to advance the understanding of ICN governance in face of increasing diversity among its members.

Overall, the ICN has performed well in the short run vis-à-vis its own goals, but it would face more difficult, postponed tasks in the long run. It makes sense that the ICN began with relatively easy areas. Concrete evidence of success would enhance the credibility of the ICN as a benchmarking promoter. In turn, better credibility might encourage further alignment with the Network's recommendations by its members. When we researchers evaluate the ICN's convergence endeavour, this organizational strategy should be taken into account. In short, concrete impacts of ICN recommendations on national rules should not be underestimated. At the same time, it is important to remember that the ICN 'has already picked the low hanging fruit' (Coppola and Lagdameo 2011: 315) and would therefore face more challenging areas such as business-conduct-specific rules in monopoly policy.

As Eleanor Fox (2009: 165-168) rightly points out, a fact that the ICN partially achieves its goals does not necessarily mean the Network is sufficient and legitimate for global competition governance. As explained above, ICN goals are modest and its agenda is far from exhaustive. This strategy is understandable because different topics within the competition issue involve different underlying logics and do not necessarily fit to the working method of benchmarking well. This is why the ICN is not and does not aim to be comprehensive. Concerning legitimacy, as global governance institutions becomes more relevant and influential, they face more demands for legitimacy, be it

normal (an institution has the right to rule) or sociological (an institution is perceived to have the right to rule) (Buchanan and Keohane 2006: 406-407). The ICN is not an exception. All issues ranging from inclusiveness and transparency, clarity of procedures of steering-group member selection, to name a few, may upsurge in the Network.

One thing clear at this moment is that the transformation of the ICN into a binding rule-making body is unlikely. Such attempt, which is prescribed by some commentators, would mean a loss of ICN distinctiveness. By contrast, the degree of task expansion in the coming years remains uncertain. It is uncertain partially because it depends on other international institutions' activities. For example, there is no consensus among ICN members whether sector-specific debate can be better developed at the OECD or not. Despite some initial success, absorbing ever-growing diverse demands from the members remains a big and fundamental challenge for the ICN.

This article has focused on policy convergence in terms of scope and degree. In other words, it concentrated on results rather than processes. Yet, process-oriented research (policy transfer, policy diffusion and so on) tracing the way ideas are diffused, crystalized as best practices, and adopted in various local political contexts might be not only interesting but also complementary to this research.

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Multiple Principles for Multilateral Interventions: The Ideational Divergences between EU and China

Abstract

The efficiency and credibility of UN multilateral framework on international intervention is challenged by the fact that international actors hold contrasting positions and principles. The paper first displays recent cases of Darfur, Libya and Syria, in which the EU and its member states are more inclined to intervene when a humanitarian crisis occurs, whereas China often falls behind and occasionally runs counter to a proposal for intervention in the UN. The conventional wisdom often attributes their policies to the pursuit of material national interests. However, after the further investigation of their preferred principles: Non-Interference in Domestic Affairs and Responsibility to Protect, I suggest that, only take ideational factors such as norms and principles into account we can resolve empirical anomalies in specific cases where China or EU lacks sufficient economic and geopolitical motivations.

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This article will elaborate the conception and categorization of international intervention, and investigate two related questions: whether the EU and China adopt a common position or divergent positions concerning recent cases of multilateral interventions, and whether EU and China insist contested principles which may hamper the establishment and anchoring of EU-China cooperation in multilateral interventions? At first glance both their adopted positions and alleged principles seem rather divergent. For example, considering the humanitarian crisis and possible multilateral intervention in Darfur, arguably, China emphasized the need to respect Sudan's sovereignty which means the requirement that Sudan consent to an international intervention, while EU demonstrated its commitment to human rights and the emerging norm of the responsibility to protect in Darfur. At the same time we can observe the correlation with their divergent policies: China is usually reluctant to intervene whereas EU often attempts to intervene when a crisis arises.

The principle of sovereignty is a defining pillar of the UN system and international law, which was embedded in the earliest multilateral arrangements: the Peace of Westphalia in 1648. This principle emphasizes a state's freedom and independence from external interference regardless of their size, material power and domestic political system, thus could restrain most powerful states from imposing their own interests or values on less powerful states in the name of altruistic concerns.¹ Hence, sovereignty, as well as the related principle of non-interference in states' domestic affairs, is especially championed by non-west developing countries which had been classic targets of intervention. China is one of these countries. For, China has an unpleasant 'humiliating century' of being intervened by western empires in the past, and now is also under pressure as some powerful liberal-democracies promote democracy as the only legal form of governance.

The idea of human rights has played a more salient, but still contested role in world politics since the end of World War II. On the one hand, as an important international norm, human rights practice has developed in multilateral framework such as UNHRC and ICC. On the other, human rights challenge the sovereignty as the core principle of multilateralism by giving a possible license to humanitarian interventions, which aim to protect human rights across the world where states may fail to protect their own people. As a perceived normative power, EU actively supports both multilateralism and human rights, on which the political integration of Europe has been based. However, EU faces a dilemma that human rights it claims to promote have limited legal support in a multilateral system which is based on sovereign states, unless human rights become a universal principle applied to all countries in practice.

¹ See Article 2(4) of UN Charter: *"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."*

The first section of this article conceptualizes multilateralism, intervention and in particular multilateral intervention. A subsequent section proceeds to outline the steady positions of China and EU in relevant cases in 21st century: From Sudan to Syria. In the third section, we will investigate two principles separately held by China and EU regarding international interventions: Non-interference in domestic affairs and Responsibility to Protect.

(I) Defining Multilateral Intervention

1.1 Multilateralism

Plenty of attempts have been made to define the nature of multilateralism. Among them John Ruggie may be the most prominent interpreter of the elusive conception. Beyond Robert Keohane's moderate definition of multilateralism as 'the practice of coordinating national policies in groups of three or more states, through ad hoc arrangements or by means of institutions' (Keohane 1990: 731), Ruggie emphasizes that multilateralism is built on 'generalized' principles of conduct, which specify 'appropriate conduct for a class of actions, without regard to particularistic interests of the parties or the strategic exigencies' (Ruggie 1992:571). Therefore, multilateralism could involve justice, obligation, and international law, which makes itself matters more than the number of parties or degree of institutionalization. Combining Keohane's 'nominal' definition as contrast to strictly unilateral or bilateral initiatives and Ruggie's emphasis on normative principles, I agree with a modern conception of multilateralism as: "Three or more actors engaging in voluntary and (essentially) institutionalized international cooperation governed by norms and principles, with rules that apply (by and large) equally to all states." (Bouchard and Peterson 2011: 10)

Multilateralism could find its application in the international disarmament and security international trade, the monetary system, or the environment issues, where challenges are too vast and complex for any single state, no matter how powerful, to effectively manage on its own, thus international cooperation seems desirable in the pursuit of clear common interests. However, the practical role of multilateralism varied between issue-areas: it has played more crucial role in so-called 'low politics' areas such as trade cooperation, while in 'high politics' concerning national security where multilateralism have often proved less effective and little regulative. Following this phenomenon we can find different forms of multilateral institutions on the global level. On the one side of the spectrum, WTO and IMF represent a more rule-based institution where certain principles receive comparable wide reorganization and effective enforcement; on the other side, UN general assembly is typical cases of 'soft' multilateralism where contrasting principles display and empty talks often happen. Another type of multilateralism is the case of

International Criminal Court (ICC) which represents a series of strong principles such as judicial intervention, while its enforcement is limited since several great powers are still extralegal.

Today, almost all countries agree with, at least not oppose multilateralism in principle, while their attachment to multilateralism in practice varies significantly. There are at least two factors account for this result—the material power gaps and the ideational divergences among them. Taken account of power distribution, multilateralism is regarded by realists as the tactic of the weak, at least the military weak. The best example may be the European Union, who opposes unilateralism because of its limited capacity for coercive unilateral action. For EU, supporting multilateralism has strategic payoffs with little cost, whereas powerful U.S has much less motives in pursuing multilateralism which may constrain its freedom of actions (Kagan, 2002).² Considering ideational factor, the successful experience of integration and multilateral governance represents a conscious rejection of the European *realpolitik* in the past, while this is not the case for U.S, as well as emerging powers in the world. Nevertheless, EU seeks to built partnership with BRICS countries in the pursuit of ‘effective multilateralism’ (Grevi and de Vasconcelos 2008), while they may differ considerably with one another on the principles underpinning the multilateralism.

1.2 *Intervention: Unilateral and Multilateral*

I focus on international interventions, where multilateralism often fails and unilateral actions prevail. Put it simple, international intervention is an external action exercised by one state, group of states, or international organizations, which aims at the internal affair of another state. An intervention can be made by various measures. The entire gamut of intervention tools includes (1) diplomatic interferences, namely declaratory policy, which are non-coercive (2) economic and trade sanctions, or other international sanctions such as arms embargo through international cooperation decisions, which are coercive but non-forcible and (3) military intervention actions such as air raid, occupation and forcible peace-keeping, which are most coercive and aggressive.

Besides, there exists a fourth kind of intervention: (4) political promotion, which is non-aggressive but different from sanctions or formal diplomatic means. Its indirect interventionary activities include information warfare, propaganda, advertising and so on, which aim to gain political support for a political reform or regime change of another state. For example, the National Endowment for Democracy (NED), whose funding mostly comes from the American governmental appropriation by Congress, only supports

² As suggested by Kagan, Europeans and Americans hold very different strategic cultures at present: U.S. is more willing to resort force and more inclined to unilateral actions than the EU and its member states. Surely, the Obama administration shows more respects and demands to multilateralism than his predecessor.

democratization programs in countries outside the United States, and thus belongs to the fourth kind of international intervention.

Considering the wide range of actions and cases that EU and China concerned and involved, here I adopt a broader definition of intervention. First, it is not confined to the use of armed force. This point is not for EU who lacks military capabilities and prefers to civilian means, but also for China who insists that non-coercive means such as meeting Dalai Lama also could constitute interference in China's domestic affairs. Second, it does not require the 'non-consent' of target state as some legal definition emphasizes, because in practice it is difficult to measure the degree of consent which could be ambiguous or forced. Third, the definition does not rely on the humanitarian purpose of preventing widespread human rights violations, which is sometimes suspected to conceal other motives for interests, in particular in the eyes of developing countries including China.

Meanwhile, a strict line should be drawn between unilateral and multilateral interventions. On the one side, an action through the UN Security Council, often for peacekeeping initiatives, is definitely a multilateral intervention which survives from the check of veto powers. On the other, the Bush doctrine and United States realpolitik is the quintessence of pursuing unilateral foreign intervention, which even triggered a transatlantic quarrel during Iraqi war in 2003. On this view, the criteria distinguish unilateral and multilateral intervention is whether the intervention secures UN authorization. However, according to the definition of multilateralism, a multilateral cooperation among three or more states also happens in regional organization or other groups of states, not only within UN framework. Hence, we have intractable cases to be classified, for instance, NATO's intervention in Kosovo in 1999. NATO's bombing of the former Federal Republic of Yugoslavia is a multilateral military action among 13 NATO member states but without advance authorization from the UN Security Council.

Here I argue that NATO's intervention in Kosovo is not a multilateral intervention by adding the precondition of jurisdiction: the target state should be the member of the organization which undertakes the intervention. Only if so, the norms and principles governing this multilateral intervention could be naturally applied to the intervened state, which is assumed to comply with these principles since it became a member voluntarily. For, multilateral intervention is different from ordinary multilateral cooperation among 'three or more states' in other fields since its target is also a sovereign state, which must be taken into account. Regarding this precondition, UN intervention in Gulf War during 1990-91 was multilateral since both Kuwait and Iraq are UN member states; ECOWAS intervention in Liberia was multilateral since Liberia was its member;³ while NATO's intervention in Kosovo cannot meet the criteria because the neither the former Yugoslavia nor Kosovo was a member of NATO. Instead, we may grant NATO's intervention

³ UN also authorized ECOWAS intervention in 1992, S/RES/788 (1992), 19 November 1992

another title: collective intervention, which refers to activities that require the coordination of efforts by two or more individual states. Furthermore, we can find another realist reason to refute the case of Kosovo as multilateral if we believe that multilateralism is based on the multiple centers of power ('multipolarity'), in which we count NATO or the West as one polarity, and thus unilateralism only. In sum, NATO was regarded as one actor rather than 'three or more' in cases like Kosovo.

1.3 Multilateral Intervention on humanitarian ground: Practice and Debate

A rigid definition usually raises more questions than it answers. Nevertheless, now we get a relatively narrow definition of multilateral intervention, as a fragile alliance of two different conceptions: multilateralism and intervention, as follows:

'Three or more actors engaging in a policy aims at the domestic affairs of another state through institutionalized international cooperation governed by norms and principles. In addition, the target state should be a member of this international institution or organization'.

According to this definition, the most frequent multilateral interventions are through United Nations which includes almost all the countries of the world, whereas interventions undertaken by regional organization could be the exception if they can meet the additional precondition.

Historically, multilateral intervention can be traced back to the 19th century, the Concert of Europe. Its founding powers were Austria, Prussia, Russia and the Britain, later France joined as a fifth member of the concert. Largely as a reaction to the radicalism of the French Revolution, they share an important principle: suppressing liberalism and nationalism, and revert to the *Status quo* of Europe prior to 1789. Among the five the Prussia, Austria and Russia formed the Holy Alliance with the expressed intent of preserving Christian values and traditional monarchism. Following their shared principles and obligations, the Concert of Europe made or attempted to made interventions. For example, in 1822, the Congress of Verona met to decide the issue if France could intervene on the side of the Spanish royalists in the *Trienio Liberal*. After receiving permission, Louis XV III dispatched five army corps to restore Ferdinand VII of Spain.⁴ After its 40 year's success in preserving peace, the shared principle of the Concert of Europe was eroded by the surge of nationalism and liberalism after the European Revolutions of 1848, followed by a series of war and World War I finally.

⁴ Strictly, Spain is not a member of Concert of Europe. But this intervention at least reached a fair consensus of multipolarities in Europe except Britain, which prevented the allies from interfering with the revolts occurring in Spanish America and created enough discord among the allies to cause a breakdown in the congress system.

In the 20th century, the United Nations lend the strength of multilateralism from the Concert of Europe and the League of Nations, by establishing an institution that managing issues of security and intervention in a multilateral fashion, and requiring the coordination of great powers: in 1945 were United States, Soviet Union, United Kingdom, France and China who possess privileged permanent membership on the with veto power until now. As suggested in the UN chapter, shared principles such as preventing aggressive war, promoting human rights and social/economic progress, which are far away from that of Concert of Europe, should be the cornerstones of multilateralism in UN. However, a problem immediately arises as these various principles increasingly intertwined in particular in the aftermath of the bipolar world, heated debates in UN are inevitable and the consensus of UN member states is more difficult to reach. A typical example is the debate about interventions: Should we lift the general prohibition on the use of force (e.g. the Article 2(4)) to intervene a sovereign UN member states for the exception of protecting their people from wholesale human rights violations such as genocide (e.g. the 1948 Genocide Convention)?

Before 1990s the principle of non-intervention was dominant, because (1) during the Cold War any intervention or proposal for interventions from either the Soviet bloc or the Western camp was easily suspected and objected by the other side; (2) in the era of decolonization a large number of post colonial countries who cherishing self-determination were strongly opposing international intervention (Roberts 2004:78-80). After the defeat of Saddam Hussein in 1991, there is no more war of aggregation⁵ which can trigger the conventional multilateral intervention of UN according to the Article 39 of UN Charter.⁶ A less clear-out turning point also happened in 1991 and in Iraq, when the UN Security Council Resolution 688 first time concerned the refugee crisis caused by repression of the Iraqi Kurdish as a “threat to International Peace and Security”,⁷ which was used by France, the UK and the US to intervene Iraq with no-fly zones. After that, the UN Security Council explicitly referred 8 cases involving domestic humanitarian crisis in 1990s to the Chapter VII: Bosnia and Herzegovina, Somalia, Rwanda, Haiti, Albania, Sierra Leone, Kosovo and East Timor (Roberts 2004: 82). The scope of Article 39 has been extended.

Since then, the humanitarian intervention becomes the most frequent but also controversial case of intervention. It is frequent because intra-state conflicts between regimes, ethnical and social groups have mushroomed in some developing countries since the end of the Cold War. Sometimes they are labeled as

⁵ The war of aggression is a military invasion waged without the justification of self-defence, usually for territorial gain and subjugation.

⁶ “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. ”

⁷ S/RES/0688 (1991), 5 April 1991

'wars of the third kind' (Holsti 1996), which often result unacceptable violations of civilian human rights such as pillage, rape, deportation and even massacre in Rwanda, Kosovo and Darfur. It gives rise to the attempt to correct the situation from international community in particular countries are more sensitive to the intensification of refugee flows and media effects. While, it is controversial because there are various standards or legal definitions of humanitarian intervention, including divergences in whether humanitarian intervention is limited to cases where there has been explicit UN Security Council authorization for action; and whether humanitarian interventions is limited to instances where principle of sovereignty is respected, say, there is an consent from the host state.

Concerning the debate about who should intervene, for the convenience of the analysis, I have made a pragmatic definition of multilateral intervention which emphasizes the fundamental role of UN in multilateral intervention while still keep the room for regional organizations in occasional situations. Two reasons further support the exception for regional organization: (1) to limit the monopoly of UN in multilateral intervention. Such an absolute monopoly may encourage the overuse of veto in Security Council, thus any objection from the permanent five, possibly only for the purpose of support their allies, could thwart the proposal for a legitimate intervention; (2) to recognize the active role of regional or sub regional organizations. Due to their geographical proximity, states in a same region are usually more affected and sensitive to the domestic situation of their neighbors, thus may have stronger motives and more effective means to intervene if there is a need.⁸

Besides, we do not exclude the possible validity of an intervention even it cannot meet the criteria of multilateral intervention. For example, NATO's unilateral intervention was regarded as "illegal but legitimate" by the Independent International Commission on Kosovo (2000: 4) because the intervention served as the last resort after the exhaustion of all diplomatic means and had the effect of liberating the majority population of Kosovo from a long period of oppression. However, there is no *opinio juris* in favor of this kind of unilateral humanitarian Intervention because the practice has been so haphazard, parochial, and controversial that it cannot create a customary norm (Tyagi 1995:893). Generally, unilateralism should be avoided as much as possible in international intervention since it pays insufficient respect to both the will of target state and the consensus of international society thus may damage the stability of international order.

What we are explicitly concern is the debate of principles on which multilateral intervention should based. This debate directly affects the effectiveness of a multilateral intervention and the credibility of UN institutional framework, and thus could cause significant consequence in international relations in a long

⁸This point is also recognized by ICISS report on responsibility to protect. (ICISS 2001: 53)

term. The phenomenon we can observe clearly is that great powers in the world hold different and even contrasting positions on international intervention since Kosovo: U.S and EU are more inclined to intervene when a crisis occurs, whereas China and Russia often fall behind and occasionally run counter to a proposal of intervention in the UN. The recent case is in Syria, China, together with Russia, have vetoed European and American-backed UN Security Council resolution that threatened sanctions against the Assad regime if it did not immediately halt its military crackdown against civilians. In next part, we will review China and EU's positions on multilateral interventions, such as in Darfur, Libya and Syria.

(II) European and Chinese Positions on Multilateral Interventions

2.1 European Positions: inclined to intervene

The conflicts in the former Yugoslavia taught European Union a lesson: without the military troops of U.S, Europeans was unable to handle their inner crisis, not mention that outside Europe. The lesson of Bosnia made Europeans elites realize that it is necessary to develop a common foreign and security policy, which could be more capable of preventing and intervening similar humanitarian disasters. After that, EU is on the way of becoming a more capable international actor, not only owning 'civilian power' such as economic influence, but also began to create its own military force (EU Battlegroup) under the framework of Common Security and Defense Policy (CSDP), followed by several peacekeeping missions such as in Macedonia in 2003, Bosnia in 2004, Eastern Congo in 2003/2006, and Chad and Central African Republic in 2008, which demonstrate that EU itself could successfully deploy thousands of troops without NATO. According to the EU's Security Strategy (ESS), EU believes that "spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order." To fulfill the goal, EU needs to 'develop a strategic culture that fosters early, rapid, and when necessary, robust intervention'. (Solana 2003: 10, 11)

A decade past since the launch of ESS and that ESDP was declared fully operational, numerous papers have discussed the (in)effectiveness of European foreign policy, including on international interventions. Most notoriously when the EU failed to prevent, and later to stop a humanitarian crisis, EU is depicted as repeating the experience in 1990s' Balkan time and again. For example in Darfur, EU's intervention was criticized as insufficient since it preferred to use financial aid to support African Union peacekeeping force rather than dispatch European troops to Darfur, and insisted working through UN institution to secure a multilateral mandate for stronger actions which is at best slow to act (Kubicek and Parke 2011). This policy outcome was caused by various reasons, not only including the long disturbing 'Capabilities-Expectation

Gap': a gap between what the EU had been talked up to do and what it was able to deliver in terms of foreign policies (Hill 1993), but also the rising 'Consensus-Expectation Gap': a gap between what the EU member-states are expected to do in the world and what they are actually able to concur (Toje 2008).

Policy outcomes, however, are different from, and not only determined by policy preferences. When we discuss EU's positions on intervention, it is more like to demonstrate EU's policy preference, the common stance, and the 'expectation' as the wishes that the EU institutions and members themselves have raised. Rather, the outcome of EU's foreign policy which needs to take account to various complicating factors ranging from the policy-making process to geopolitical policy games, and thus go beyond the content of this article. For the purpose of this our focus will be mainly on the European 'position'. Although it would be senseless to claim that European foreign policy can be fully understood from the point of policy preference or policy objectives, to explain an action is normally start with citing what they intend to do.

In the case of Darfur, the Union, at least some senior officials once regarded it was a perfect opportunity to undertake a low risk but comparable high reward military intervention (quoted in Toje 2008: 136). However, the lack of will and capabilities among member states, in particular France, U.K and Germany, combining China and Russia's opposition to military intervention in UN Security Council, made EU to adopt a soft kind of crisis management, such as declarations to concern, financial support to African Union Monitoring Mission (AMIS) and economic sanctions against Sudanese government.⁹ Among them the sanction policy is a common measure of international intervention and long existed in European foreign policy (Kreutz 2005). Although it is fair enough to criticize that EU's non-aggressive intervention did not stop the deterioration of Darfur situation and thus too little, the EU's preference to intervene was quite clear.

In response to the Libyan crisis in 2011, EU showed its consistent position on intervention. On diplomacy, the High Representative for CFSP (HR) Catherine Ashton on behalf of the EU declared the extreme concern for the situation;¹⁰ then, the European Council declared that Gaddafi had lost all legitimacy and recognized the Libyan rebel TNC in Benghazi as a legitimate interlocutor.¹¹ On financial aid, EU and its member states provided over €158 million for humanitarian aid and civil protection.¹² On economic sanctions, as fighting

⁹ European Commission, *European Union response to the Darfur crisis*, Factsheet ,Brussels, July 2006

¹⁰ Council of the European Union, *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on events in Libya*, Brussels, 20 February 2011, 6795/1/11 PRESSE 33

¹¹ Council of the European Union, *Declaration of the Extraordinary European Council*, Brussels, 11 March 2011, EUCO 7/1/11 REV 1

¹² European Commission, *Libyan Crisis*, Factsheet, January 2012

went on in Libya, the EU imposed an arms embargo against the Libyan leadership.¹³ This sanction was first adopted by UN Security Council resolution 1973, but extended by EU with a non-fly zone a *de facto* oil and gas embargo. Besides, an EU military operation in support of humanitarian assistance operations (EUFOR Libya) was launched, waiting for the request from the UN Office for the Coordination of Humanitarian Affairs (OCHA).¹⁴ Although EU adopted various measures for the intervention in Libya, the problem of coherence still existed because of unilateral actions or inactions of the member states (Koenig 2011). While France and UK were actively preparing for the military intervention in Libya, Germany abstained on resolution 1973 together with China, Russia, India and Brazil.

Facing the ongoing crisis of Syria, EU poses a consistent position and adopts similar measures of intervention like in Darfur and Libya. EU's measures include political condemnation, arms embargo, economic sanctions on oil importing, suspending the cooperation and association agreements with Syria, support to the regional organization: League of Arab States (LAS) to intervene, and giving 47 million in humanitarian assistance.¹⁵ Besides, following multilateral fashion, EU attempted to push for Chinese and Russian cooperation in Syria. During the EU-China summit in Beijing in February 2012, Van Rompuy, President of the European Council, said the EU supported efforts of the Arab League to end violence in Syria and appealed to "all members of the UN Security Council"—a group that includes China—to "act responsibly."¹⁶ EU leaders also press Russia during a summit in St. Petersburg in June 2012, to put pressure on its ally to withdraw heavy weapons from cities and comply fully with UN envoy Kofi Annan's peace plan.¹⁷

2.2 Chinese Positions: reluctant to intervene

The Crisis of Darfur completely exposed the divergences between China and the West on international intervention, which was highlighted before 2008 Beijing Olympics with the mass campaigns against Chinese government in Europe and North America. Beijing was blamed as an irresponsible power in the management of Darfur conflicts, who obstructed any decision in UN Security Council on a possible UN

¹³ Council of the European Union, *Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya*, Brussels, 28 February 2011

¹⁴ Council of the European Union: *Council decides on EU military operation in support of humanitarian assistance operations in Libya*, Brussels, 1 April 2011, 8589/11 PRESSE 91

¹⁵ European Commission, *European Union and Syria*, Factsheet, Luxemburg, 15 October 2012

¹⁶ Joe McDonald, 'EU leader pushes for Chinese help on Iran, Syria', *Associate Press*, 14 February 2012

¹⁷ 'Syria crisis tops EU-Russia summit agenda', *EurActiv*, 4 June 2012

multilateral intervention to halt the slaughter in Darfur. And even worse, Beijing was suspected of helping Sudan's government militarily in Darfur according to reports from Amnesty International (2007) and some western Medias.¹⁸ China, of course, denied this accusation.¹⁹ The conventional wisdom attributes China's position to its close oil ties to the Sudanese regime. However, this prevailing explanation in terms of economic-motivation may ignore the importance of ideational factor in China's foreign policy, thus fail to seize the general and consistent Chinese position on intervention, in particular does not provide a satisfactory account of some cases in which China's economic motivation is insufficient.

In Darfur, China was unwilling to adopt coercive measures to intervene Sudan through UN multilateral framework. The UN Security Council Resolution 1556 is the first resolution to address the war in Darfur, which demanded that Khartoum disarm the Janjaweed militia and bring to justice those who had committed violations of human rights in Darfur.²⁰ China abstained with the claim that some measures included in the text of the resolution were 'unhelpful'. Later, the Resolution 1564 threatened the imposition of sanctions against Sudan if it failed to comply with its obligations on Darfur, and an international inquiry was established to investigate violations of human rights in the region.²¹ This was the first time a Security Council resolution had invoked The Convention on the Prevention and Punishment of the Crime of Genocide by establishing the international inquiry. Again, China expressed its reservations and dissent with an abstention. "Instead of helping to solve the problem, sanctions may make them even more complicated," said Wang Guangya of China.²² Under the criticism from international NGO and western governments before the Beijing Olympics, later China put more pressures on Sudan to accept the UN peace-keeping. However, a quantitative discourse analysis provides convincing evidence that China's position on Darfur was quite different from that of U.S: In their respective 20 official speeches and documents, U.S mentioned sanctions 74 times and approves it explicitly 61 times, whereas China mentioned sanctions 49 times and opposes it 22 times. (Gu and Dong 2010: 28)

When Libya Civil War broke out, More than 30,000 Chinese nationals worked in Libya, including on oil fields, small shops. China mounted a big operation to fly out Chinese citizens on chartered flights and

¹⁸ For example, Hilary Andersson, "China 'is fuelling war in Darfur', *BBC News*, 13 July 2008

¹⁹ Zhang Juan, 'Zhai Juan: The Weapons in Darfur is not from China', *CRI online*, 17 April, 2007. 张娟：《翟隽：达尔富尔地区武器来源帽子扣不到中国头上》，国际在线。

²⁰ S/RES/1556 (2004) ,30 July 2004

²¹ S/RES/1564 (2004) ,18 September 2004

²² Explanatory Remarks by Chinese Permanent Representative Mr. Wang Guangya at Security Council on Sudan Darfur Draft Resolution, 18 September, 2004

military aircraft, which demonstrates China's growing ability and willing in operations abroad. At the same time China voted in favour of UN Security Council resolution 1970 which condemned the use of lethal force by the regime of Gaddafi against protesters, and imposed a series of international sanctions in response.²³ This could be read as a sign that China began to adopt a more permissive approach to intervention. However, on March China retreated somewhat to its traditional position by abstaining in the vote on the UN Security Council resolution 1973 that authorized a non-fly zone and 'all necessary measures' to protect civilians in Libya.²⁴ What the outcome was: the France, UK and US-led military intervention sidetracked from the aim of protecting civilians but aiding the rebels for hastening Qaddafi's downfall. During the course of the events, China repeatedly accused NATO of overstepping its mandate several times.

The consequence of Libya resolutions has strengthened China's resistant position on intervention. Considering the current crisis and a possible multilateral intervention in Syria, China vetoed a Western-drafted resolution along with Russia at the UN Security Council on 4 October, 2011 that would have threatened Assad's regime with targeted sanctions if it continued its campaign against protesters. On 4 February 2012, a similar resolution was vetoed by China and Russia again. On 4 August, China and Russia vetoed UN Security Council resolutions which could have led to sanctions against Syria a third time. China's expressed its stance clearly early in May 2011 as follows:²⁵

"China believes that when it comes to properly handling the current Syrian situation, it is the correct direction and major approach to resolve the internal differences through political dialogue and maintain its national stability as well as the overall stability and security of the Middle East. The future of Syria should be independently decided by the Syrian people themselves free from external interference. We hope the international community continues to play a constructive role in this regard."

In sum, although China's material power has grown significantly in the past two decades and Chinese national economic and strategic interests extend to remote areas such as Africa and Middle East, China generally continues to adopt a *status quo* non-intervention policy or only non-coercive diplomatic engagement toward a conflict outside its border even the conflict may endanger its national interest. For sure China's pragmatic policies in specific cases could be nuanced and flexible; however in a realist perspective, there exists a looming tension between China's growing power and its defensive foreign policy strategy which may be less applicable to protect China's expanding interests all over the world. Meanwhile, EU keeps on its assertive human right policy and adopts a general interventionist position in recent cases.

²³ S/RES/1970 (2011), 26 February 2011

²⁴ UN Security Council SC/10200, 17 March 2011

²⁵ Ministry of Foreign Affairs of the People's Republic of China, 'Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on May 24, 2011', 25 May, 2011.

Although EU's relative power is supposed to be declined during the Euro crisis, the economic sanctions as coercive means are frequently used. The next section explores the role of China and EU's principles, which could be a reason to explain why EU and China's positions on intervention are not always reflecting their powers and interests directly.

(III) European and Chinese Principles on Multilateral Interventions

Defining ideas is not an easy task in political science. Vivian Schmidt provides a commendable review about the nature of ideas in political science, and she herself categorizes two types of ideas: cognitive ideas or called causal ideas elucidate "what is and what to do", and normative ideas indicate "what is good or bad about what is" in light of "what one ought to do". (Schmidt 2008: 306-309) Goldstein and Keohane (1993) classify ideas into world views, principled beliefs and causal beliefs. World views is the fundamental cognitive orientation of an individual or society encompassing the entirety of the individual or society's knowledge and point-of-view, which refers to the framework of ideas and beliefs through which an individual, group or culture interprets the world and interacts with it. Principled beliefs specify ethical criteria for distinguish right from wrong and just from unjust in international relations. For example, 'Human rights ranks above Sovereignty' and "Sovereignty ranks above Human rights' are two sharply opposing principle beliefs. Causal beliefs serve as guides for agents on how to achieve their goals. For example, the efficacy of EU's promotion of norms depends on the existence of a set of shared causal beliefs by other actors, which believe EU's actions could benefit them, rather than threat them.

I mainly investigate the ideas taken the form of principle beliefs, which certainly related to broader world views.²⁶ There is a long-standing debate in the study of history and social science that whether and to what extent we can explain agent's actions from their professed principle. Quentin Skinner (2002: Chapter 8) gives a solution by emphasizing that even these principles are not genuine motives of agents and thus causes of their behaviours, but agents possess a strong motive for attempting to legitimate their (in particular questionable) behaviours. For example, they may utilize existing favourable terms established in their societies, or invent new norms to change existing terms. In the end, "They will find themselves committed to behaving in such a way that their actions remain compatible with the claim that their professed principles genuinely motivated them". This insightful vision provides implication to the study on

²⁶ For instance, Christianity and Confucianism are different world views. To understand their influence on European and Chinese foreign policy would require a broader comparative study of cultures, religions and civilizations. Nevertheless, some modern conceptions such as sovereignty and human rights have played the similar role as world views. They originate from the West, but gradually approved by societies across cultures in their particular ways. Therefore, it is possible to explicitly focus on variations of these ideas that have been affected by the intellectual and political movements happened in European and Chinese modern histories.

intervention. Because of the continuing controversy of intervention, both EU's interventionist policy and China's non-intervention policy are questionable behaviours in the eyes of others, no matter what motives behind and whether their motives are worthy. Hence both sides use their favourable terms either human rights or sovereignty established in international society, or promote emerging norms like R2P to legitimate their policies. Once they did that their policy options will be restricted to a corresponding range of actions even the actions are not always benefit them. First to this extent, their policy can be partly determined by their alleged principles.

3.1 *European Supported Principle: Responsibility to Protect*

In sum, EU and its member states are at the forefront of multilateral intervention, although sometimes EU made the efforts in vain, partly for the lack of its own coherence and capabilities, which makes European intervention often less effective; partly for the unsettled debate on principles of intervention in the international fora, which makes multilateral action in UN usually unavailable. Considering the latter—EU endorses a re-conceptualization of sovereignty as Responsibility to Protect (R2P) emerged. This rising principle could justify, and even guide EU's positions on international intervention, although not surprisingly EU has difficulties to fully transform the doctrine into effective policies (See Kirn 2011).

R2P was invented by International Commission on Intervention and State Sovereignty (ICISS, China is not in the commission) in 2001, and established in 2005 as a UN initiative, which consists of an emerging set of principles, based on the idea that sovereignty is not a authority, but a responsibility.²⁷ Protecting its own people's basic human rights thus becomes the precondition of respecting a state's sovereignty. As suggested in the UN Outcome Document, "If the state fails to protect its citizens from mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention is considered the last resort."²⁸ Besides, the ICISS report (2001) confirmed the paramount status of UN in interventions as "there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes". Security Council also reaffirmed "the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity".²⁹

²⁷ This interpretation of sovereignty can be traced back in 1990s (e.g. Deng 1995, Barkin 1998)

²⁸ United Nations General Assembly, '2005 World Summit Outcome', Sixtieth session, items 48 and 121 of the provisional agenda. A/60/L.1, 15 September, 2012

²⁹ UN Security Council S/RES/1674 , 28 April 2006

EU is one of the most enthusiastic supporters of R2P, and its support is enduring. During the 2005 UN Summit, EU states worked closely with members of the African Union who pioneered the concept of R2P, and finally made the diplomacy success in UN. After that, EU has expressed its endorsement and support of the R2P through following instruments such as 'The European Consensus on Development' (Article 37),³⁰ 'Providing Security in a Changing World'³¹ which clearly claims that "sovereign governments must take responsibility for the consequences of their actions and hold a shared responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity", and quite vocally supportive EU Parliamentary Resolutions reference R2P during the Libyan Crisis.³²

As suggested in European Commission's answers to parliamentary questions, EU only could promote the idea of R2P in multilateral and bilateral ways: "While the Commission welcomes the development of this norm, it is for the UN member states to act upon it" (23 February 2007), or "Where it can the Commission will seek to raise the importance of the Responsibility to Protect in its bilateral relations" (6 March 2007) (quoted in Evans 2007). Concerning bilateral way, for instance, EU funds the African Peace and Security Architecture (APSA) to support the African Union's to implement the Responsibility to Protect. This also followed the European Consensus on Development in 2006 which plans to "strengthened role for the regional and sub-regional organizations in the process of enhancing international peace and security"³³ For EU, UN is the primary multilateral framework to promote R2P in practice. In words, EU member states, sometimes on the behalf of the Union, made over 50 references to R2P in the UN Security Council or the General Assembly from 2005 to 2007.³⁴ In action, EU also worked closely with UN in military crisis management, for example, the EUFOR RD Congo in 2006 (Major 2006).

However, limited consensus on the interpretation of R2P and subsequent multilateral intervention has been made as demonstrated in the ongoing predicament in UN Security Council. According to the 2005 Outcome Documents, collective action to protect should be decided through the Security Council in

³⁰ European Parliament Council Commission, 'The European Consensus on Development', *Official Journal of the European Union*, C46/1, 24 Feb 2006.

³¹ Council of the European Union, Report on the Implementation of the European Security Strategy, '*Providing Security in a Changing World*', Brussels, S407/08, 11 December 2008.p.2

³² European Parliament, Resolution on the Southern Neighbourhood, and Libya in particular, including humanitarian aspects, P7_TA-PROV(2011)0095, 10 March 2011

³³ 'The European Consensus on Development', p.7

³⁴ R2Pcs Project, 'Excerpts of Government Statements on the Responsibility to Protect Europe 2005-2007', Institute for Global Policy

accordance with the UN Chapter VI and VIII.³⁵ However, China is clear on its reluctance to intervene and holds different views on human rights and sovereignty.

3.2 Chinese Supported Principle: Non-Interference in domestic affairs

China's position on multilateral intervention is clear and basically consistent in above cases: unwilling to intervene, at least by coercive measures. In contrast to a popular argument that China supported Al-Bashir and Gaddafi regimes in the pursuit of its oil interests in Sudan and Libya, actually China's non-intervention policy (which benefits current regime *de facto*) has made Chinese assets and investments in risk during and after the regime change. That is why China recognized South Sudan and the National Transitional Council of Libya quickly, as the *ex post facto* protect to its economic interests. The economic-motivation explanation of China's position is even less convincing in the case of Syria where Chinese assets are quite limited. I shall therefore have the temerity to suggest that what guides China's position on multilateral intervention is probably the declared principle belief: non-interference in a state's internal affairs unless its sovereignty is respected.

Early in the 1950s, several principle beliefs were enshrined as the cornerstone of Chinese foreign policy, most notably is 'the Five Principles of Peaceful Coexistence': Mutual respect for each other's territorial integrity and sovereignty, Mutual non-aggression, Mutual non-interference in each other's internal affairs, Equality and mutual benefit, and Peaceful co-existence.³⁶ During 1960s and 1970s, China supported the national self-determination movement, thus the Five Principles and in particular the principle of non-interference was somehow echoed by increasing newly independent states, who contributed to make considerable law-making declarations and resolutions in UN even before PRC regained China's UN membership in 1971. For instance, the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* in 1965,³⁷ and the *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations* in 1970.³⁸ According to these declaratory principles, China insists a classic Westphalian interpretation of international relations: based on a 'thick' notion of sovereignty, China

³⁵ '2005 World Summit Outcome', Paragraph 139.

³⁶ China's Ministry of Foreign Affairs affirmed China's continuing allegiance to The Five Principle after the change of Chinese leadership. Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on November 15, 2012

³⁷ UN General Assembly A/RES/20/2131, 21 December 1965

³⁸ UN General Assembly A/RES/25/2625 24 October 1970

refuses to support international interventions without UN Security Council authorization and invitation of the target state.

China is not simply against any humanitarian intervention or multilateral peacekeeping in the past 20 years. As an evidence of China's evolving foreign policy, China participated in multilateral intervention operations under the UN framework, such as in East Timor, Bosnia and Congo where considerable Chinese troops were deployed in large part to protect civilians. In an optimistic view, the divergence between Chinese and Western positions on interventions is under the way of lessening (Carlson 2006:224). A Chinese analyst (Pang 2009) points that China's adherence to the principle of non-interference is experiencing remarkable change, because (1) A growing domestic demand for China to protect its overseas interests; (2) Western pressures on China to shoulder more international responsibility; (3) and some developing countries adopt flexible interpretation on non-intervention, notably African Union.

However, China's positions in recent cases of Sudan, Libya and Syria require us to consider the precondition for China to intervene. In the Chinese version of multilateral intervention, emphasis is placed on the importance of respecting target's sovereignty. For example, when UN approved a multilateral intervention to Darfur, by deploying a peace-keeping force to enforce the Darfur Peace Agreement in Resolution 1706, which was strongly rejected by Sudan by refusing to participate in the Security Council session, China abstained in the name of lack of consent from Sudan.³⁹ Nearly one year later, under China's mediation and pressures, Sudan accepted the Resolution 1769 which did not include sanction threats, China voted in favor⁴⁰ and soon sent around 300 Chinese soldiers to Darfur to participate with the AU-UN Hybrid Operation in Darfur (UNAMID). As suggested by Nicola Contessi (2010: 329), China sticks to a traditional peace-keeping operation which is based on four principles: (1) deployment of the force following a ceasefire agreement; (2) the requirement of consent by the host country or belligerent parties; (3) the non-use of force, except in cases of self-defence, and (4) impartiality of the force and its commander. Based on these principles, China set a strict criterion of multilateral intervention.

While, what arose in cases of Darfur, Libya and Syria is an emerging norm of intervention: R2P, which was endorsed by China in UN with hesitation,⁴¹ but its controversial implementation has received limited support from the Chinese government. Although accepted R2P as an inspirational idea, Chinese diplomats

³⁹ UN Security Council SC/8821, 31 August 2006

⁴⁰ UN Security Council SC/9089, 31 July 2007

⁴¹ China, Russia and Algeria had initially opposed the notion of collective responsibility (paragraph 139), however Algeria's two-year term as a non-permanent member of the Security Council came to end on December 31, 2005 and British diplomats persuaded China and later Russia to pass Resolution 1674. See 'Update Report No. 1, Protection of Civilians in Armed Conflict', *Security Council Report*, March 8, 2006; E. Lederer, 'UN Affirms Duty to Defend Civilians', *The Washington Post*, April 28, 2006.

reiterate China's reservations on it. Ambassador *Liu Zhenmin*, *Deputy Permanent Representative of China to the UN*, stated China's view of R2P in UN in 2009. China emphasizes that R2P remains a concept and does not constitute a norm of international law, and reiterated the implementation of 'R2P' should not contravene the principle of state sovereignty and the principle of non-interference of internal affairs, and strictly limited to four mass atrocity crimes, namely, "genocide, war crimes, ethnic cleansing, and crimes against humanity".⁴² If there is a Chinese balance between its well established principle of non-interference and the global emerging norm of R2P, after the intervention of Libya which led to a regime change, China's balance tends to the orthodox principle of non-interference again. Qu Xing, a Chinese diplomat and IR expert, argues that R2P is vulnerably being abused in the pursuit of regime change, which is not authorized by the UN Charter, thus China vetoed on Syria in the defense of the UN Charter (Qu 2012).

Besides, the application of R2P may be too narrow since its conception of human rights gives priority to civil and political rights over socio-economic rights, which encompass issues such as the food and resources crisis. Instead, Beijing believes that the key to the final solutions of China and other developing countries' problems depends on their own economic and social developments. For example, China mentioned words relevant to 'development' 83 times in its 20 documents concerning Darfur from 2004-2008 (Gu and Dong 2010: 28). Liu Guijin, the Chinese envoy on Darfur, offered an alternative interpretation of Darfur situation by arguing that the essence of Darfur issue is not genocide, but "development", which caused the conflicts over resources between ethnic groups.⁴³ This argument of development was echoed by Sudan ambassador to China Mirghani Mohamed Salih, who attributed Darfur crisis to 'insufficient development' in an interview with a Chinese media.⁴⁴

(III) Conclusion

The EU-China divergence on intervention is not between who respects human rights in an altruistic manner and who disregards human dignity and only concerns about its selfish interests. Rather, the debate is more about the interpretation of the situation, the priority content of human rights, the frontier of sovereignty,

⁴² UN General Assembly, A/63/PV.98, 24 July 2009

⁴³ Bai Jie and Xu Song, 'Liu Guijin: The essence of Darfur issue is issue of development', *Xinhua Agency*, 29 May 2007. 白洁, 徐松: 《刘贵今: 达尔富尔问题实质是“发展的问题”》, 新华社

⁴⁴ Interview by Ruan Cishan, 'The truth in Darfur which was distorted by U.S', *Phoenix TV*, 18 October 2007. 阮次山: 《被美国歪曲的达尔富尔问题真相》, 凤凰卫视

and the expected consequence of an intervention. Two contested principles—Responsibility to Protect, and Non-Interference in Domestic Affairs—are involved in the debate of multilateral intervention, which has made contrasting claims of intervention in international stage, in particular in UN Security Council. What behind them are varying interpretations and converse orderings of state sovereignty and human rights: for R2P, human rights transcend state sovereignty since protecting human rights is the precondition of respecting state sovereignty. For Non-Interference, state sovereignty is essential for social stability and economic development, while the human rights are important but not prior to sovereignty. As the former Chinese foreign minister Tang Jiaxuan said in UN, “A country’s sovereignty is the prerequisite for and the basis of the human rights that the people of that country can enjoy. When the sovereignty of a country is put in jeopardy, its human rights can hardly be protected effectively.”⁴⁵

The argument that the principle is one of causal factor which genuinely shapes EU and China’s foreign policy preferences regarding international intervention, must be based upon an empirical assessment and be defended from a realistic objection claiming that the above rhetoric of principles is just empty phrase designed to legitimate existing foreign policies which aim to maximize national interests can be freely manipulated. However, what we begin to realize in this article is that EU and China’s general principles and positions on intervention are respectively consistent as shown above, rather than varying dramatically from case to case even national interests significantly varied in different cases.

⁴⁵ General Assembly, A/54/PV.8, p.16, 22 September 1999

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Multipolarity, Multilateralism, and Strategic Competition

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This paper explores the clash between political and economic transnationalisation, multipolarity, and the return of traditional inter-state competition. In response, the coming global order will be the result of the interplay between both structural and domestic factors, namely the realignment of U.S., European, and Chinese grand strategies on the one hand, and the trend towards anti-internationalist and inward-looking politics and non-cohesive civil-military relations on the other. The paper argues that these contradictory pressures of transnationalisation and renationalisation will undermine current multilateral institutions and in the short-to-medium term lead to a hybrid and dysfunctional global order where strategic opportunism is more prevalent.

The accelerated economic globalisation that followed the end of the Cold War and the increasingly prominent role for frameworks of transnational governance has been interpreted as a fundamental shift in the nature of international relations, and specifically as a sign that nation-states should no longer be considered the pre-eminent unit in global politics. However, in retrospect, there is an inherent contradiction in these beliefs. The multilateral system that developed alongside transnationalisation did so only under the aegis of American unipolarity and a broad consensus on the part of Western – if not global – state elites on the benefits of globalisation. The US dominated the expanding series of – in overall number, members, and mandate – international institutions (such as NATO, IMF, WTO) and presided over a growing global, liberal economy for most of the two decades that followed the collapse of the Soviet Union. American military and political power also seemed to many to be the crucial condition for the functioning of the system.

However, over the past decade, following the long wars in Iraq and Afghanistan, combined with the dramatic rise of China and the rest of Asia, American power has eroded in terms of legitimacy and resources. Though whether this represents the end of American unipolarity is still disputed (Layne, 2012; Nye, 2012; Wohlforth, 2012), it is apparent that the US is reprioritising its regional strategic interests towards the Pacific and Indian Ocean. It is unclear if and how an overstretched and preoccupied US will be able to continue to provide the basis for a global order in the future, and also if such a role is indeed necessary, or that the system can survive without it (Keohane, 2005: 12-14, 50) .

What is currently becoming more apparent is the strange tension between the classical model of international relations based on great power competition on the one hand and a fundamentally changed global system that is integrated and economically interdependent in historically unprecedented ways on the other. So far, the nascent strategic competition between the US and newly rising powers has seemed to operate largely separate from the spheres of multilateral governance and economic globalisation.

In this paper I argue that these developments should be seen and analysed together, and with special attention to the domestic factors in the regions in question, of which I focus here on growing role of populist social and political movements and civil-military relations. These domestic level developments will both impact the respective grand strategies of states and determine how they will apply diplomatic, military, and other instruments in response to the perceived changes in the international environment. My approach here therefore falls broadly under neo-classical realism (Rose, 1998; Rynning, 2002; Dueck, 2006; Layne, 2006; Dyson, 2010).

Domestic pressures in the US, Europe and China will amplify both security and economic nationalism that in turn undermines support for globalisation in general and internationalist policies specifically. Populist backlash against globalisation, liberal internationalism and the elites that support them is increasingly prominent in both the US and Europe, as evidenced by the increasingly unilateralist rhetoric in the US and the re-emergence of old nationalist stereotypes during the EU debt crisis. China too has several structural sources of domestic instability. Moreover, the decline of support for internationalism among the traditional transatlantic supporters is accelerated by the diminished American military footprint in Europe, which undermines NATO's expanded global mandate as enforcer

of the post-Cold War order. The political base for a Common Security and Defence policy in turn seems weakened in the short term, and instead, a series of bilateral arrangements, such as the recent Franco-British defence agreements, is now seen as the way forwards. The weakening of civil-military control in China and the US further decreases the cohesiveness of their grand strategies, whereas in European states the diminished integration between political and military means and ends is problematic in light of the strategic shift of the US.

It would be a mistake to simply revert to analogies to earlier eras. While the contemporary era is not the departure from traditional international relations it seemed to be twenty years ago, neither does it seem that a full-on return to traditional state-based competition is in the cards. The question for IR theorists and researchers theory is therefore how and when these two systems complement, coexist with and contradict one another. I argue that these and other developments together suggest a significant trend of re-nationalisation or multi-tiered regionalization of politics that undermines a global political order and instead drives an unstable hybrid and region-centric system.

The end of traditional international relations?

The evolution of international relations as a field reflects the developments of the past century, as drastic events as the October Revolution, the World Wars, decolonisation, nationalism, the increasing number of democracies, and the end of the Cold War challenged established ideas on the nature of global politics. The succession of theories reflect then-current concerns, whether multipolarity and the balance of power before Second World war, or bipolarity and material capabilities during the Cold War. Consequently, the field of international relations since the end of the Cold War has been articulated around the concurrent developments of the end of war between major states and globalisation. Both developments altered the manner in which the nature of the system is conceived of, the spheres of political interactions to pay attention to, as well as its predominant actors and units of analysis.

The end of the bipolar stand-off between the United States and the Soviet Union without overt direct conflict between them underlined the decades-long decline in interstate warfare. While violence became increasingly directed at groups within states, with several horrifying examples in the nineties, the more cataclysmic systemic wars between great powers seemed to be a thing of the past. Academics (Van Creveld, 1991; Kaldor, 1998) argued that the 'new wars' were less shaped by the 'rational' pursuit of national interest, but by clashes over identity. The field of strategic studies, and neo-realist theory specifically, had developed in the process of explaining bipolarity, nuclear strategy, and alliance building. However, with the perceived decline of the nation-state as the primary unit of the international system, what was traditionally thought of as international relations – diplomacy, alliances, military force, war – seemed less relevant and decreased in importance. Furthermore, instead of the international order fragmenting into distinct geopolitical poles challenging the US, it remained the only global superpower – political, military, economic, and ideological- and was able to dominate the expanding number of international institutions and presided over an expanding global, liberal economy for most of the nineties. Security was instead

conceptualized at the subnational level, and explicitly as part of a whole of social, cultural, environmental, and developmental issues. Similarly, in light with the new missions, Western, and specifically European, armed forces were refocused from traditional defensive tasks towards peacekeeping, conflict management, prevention, and counterinsurgency.

September the 11th was crucial in accelerating these trends, seemingly driving the message home that rogue states and non-state actors were the primary threats to security. The wars in Iraq and Afghanistan also appeared to demonstrate that the late 1990s focus of U.S. defence planning, as exemplified in Rumsfeld's defence transformation, in which the American armed forces were rebuilt towards hyper-kinetic, 'shock-and-awe' type warfare, was unsuited for nationbuilding and counterinsurgency. This doctrinal shift in American planning fit neatly with the comprehensive approaches preferred by the European governments. This common understanding of security allowed some rebuilding of the damaged transatlantic relations after the controversy over Iraq, at least at the level of the armed forces.

The second key development that coincides with and was accelerated by the end of the Cold War was the parallel trend of globalization. The increasing interconnectedness of national economies, made possible by the technological improvements in the speed of transport and communication, drove the initial waves of globalisation, but the breaking open of the frozen structures of the bipolar system and the victory of free-market liberalism accelerated it. Globalisation went beyond markets: the number of international and non-governmental organisations has grown rapidly over the past three decades.

Transnational politics, the Cold War global order, and American unipolarity

There is clear case to be made that a fundamental transition in global politics has taken place, as reflected in the growth in international organization in terms of both their numbers and the scope of their mandates. The international organizations created after the end of the Second World War, and expanded after the Cold War, encompass all areas of international governance, from security (North Atlantic Treaty Organization (NATO) and the United Nations (UN), finance (International Monetary Fund (IMF), World Bank), trade (World Trade Organisation (WTO), General Agreement on Tariffs and Trade (GATT), economic coordination (EU and its predecessors), and every other conceivable issue. The European Union is considered the foremost example of this drastic shift, where its member states voluntarily pooled sovereignty on issues traditionally solely belong to the state, including monetary policy and defence. That these moves are incomplete, difficult, and (currently) controversial, and, in the end, not final, does not undermine the point that they represented a departure from traditional international relations, and suggested a radically new period in international politics had been ushered, making the EU appear a post-national normative power for the 20th century (Manners, 2002).

However, there is an inherent contradiction in beliefs about the end of nation-state based politics. The multilateral system that developed alongside transnationalisation did so only under the umbrella of American unipolarity and

reflected specific geopolitical needs of the post-Second World War period. The arguments about hegemony as a necessary precondition for systemic stability are varied and inconclusive (Kindleberger, 1974; Snidal, 1985; Grunberg, 1990; Lake, 1993; Milner, 1998; Ikenberry, 2011), but it is evident that the United States was crucial in establishing and shaping the specific set of international institutions and organisations that currently make up the system. It is equally evident that these multilateral structures were created to meet the demands of the post-Second World War and Cold War international context. Both NATO and the predecessors of the EU were originally created to balance Soviet forces, contain German power, and keep the United States involved in Europe.

After the Cold War the size and mandate for NATO broadened to ensuring good governance and stability within the new members and a scope became more global, and similarly the European project has expanded in mandate, and in members. Both organisations encompass territory that belonged to the sphere of influence of the Cold War adversary. The World Bank, the IMF, and GATT similarly represented moves to rebuild the economies destroyed in the war and safeguard them from a repeat of the events that led to the war and from falling into the Soviet sphere, and gained a greater role during 1990s. However, while dynamic and adaptive, the current organisations have not been natural or inevitable emergent features of a globalising order, and reflect the time of their creation and the key role that the American leadership. As long as a broad consensus remained among transatlantic elites, and those of other industrialised state, on the benefits of globalisation, their existence was ensured. However, this system created paradoxical outcomes.

The global liberal order reinforced by the United States and the other Western states in the decade after the end of the Cold War brought about the seeds of its own weakening in three ways. First, the United States, in spite of the disappearance of its rival, maintained its global military presence and the concomitant costs of peacetime forces deployed abroad. The two Major Regional Contingencies (2MRC) planning assumptions established in the 1997 Quadrennial Defence Review (QDR) focused on states that fell outside this new global order. US armed forces should be able to simultaneously fight and win two conflicts in separate regions, one in the Middle East (Iraq and Iran), and one in East Asia (the Korean peninsula). This continued global conception of American security and interests prepared the way for the expansion of the war on Terror into Iraq. In turn, the long and costly wars in Iraq and Afghanistan eroded American power, in terms of legitimacy, and blood and treasure, in the process discouraging allies in 'old Europe' and emboldened regional challengers.

Second, the preeminent position the United States and the other Western states found themselves in after the end of the Cold War settled the ideological debate between the market and the state firmly in favour of the former. The transnationalisation of finance made possible by the continuing deregulation initiated during the Reagan-Thatcher 1980s triggered a series of global financial crises (South East Asia, Russia, Latin America) in the 1990s, but also underlined the transformational changes taking place in the global economy. The victory of the markets and access to easy money eventually undermined the stability and basis for US (and Western) power in the still on-going crisis that began in 2007, and combined with the military overextension of the War on Terror, presents us with a second, ironic and paradoxical outcome.

These first two paradoxical/ironic outcomes are especially instructive in light of the third, and most significant, development: the dramatic rise of China, as well as the emergence on the world stage of India, Brazil, and regional powers, including South Africa, Turkey, and South Korea. The rapid rise of China is the most striking and important of these developments. If current IMF projections hold, which is far from certain, the Chinese share of global GDP will surpass the US share by 2017 (see figure 1). In terms of material war-making capabilities, the CINC index of Correlates of War has China surpassing the US more than a decade ago (see figure 2). While the CINC measure is problematic, because the size of population and armed forces contribute such a large part to it, the distance between the US and China and the rest suggests that a systemic change in power distribution is taking place.

The end of American power has signalled several times before (Nye, Jr. , 2012), as it was in the 1980s when Japan (and to a lesser degree Germany) seemed to approach the economic weight of the United States. The current shift arguably differs in some important respects. The current rising powers are self-confident, self-aware, organised (in BASIC and BRICS), and are investing in traditional military power. Japan and Germany, which have been de facto protectorates of the United States since the Second World War, maintained their pacifist stances as they rebuild and grew economically. Furthermore, the absolute size of the Chinese and Indian economies and populations is by definition more impactful. The current rising states exhibit a fuller range of sources of power, which suggests that the system is heading towards a more complete state of multipolarity that encompasses all levels of political competition.

Certain themes tend to dominate discussions of multipolarity and the shifting global landscape. Authors tend to take an American perspective and focus on prescribing how American grand strategy can reconstitute itself to maintain US pre-eminence (Layne, 2012) , adapt itself to thrive in a new order with multiple centres (Zakaria, 2008), or at least ensure the survival of its preferred liberal international order (Ikenberry 2011). The emphasis the fate of American power takes in debates on multipolarity, should not lead to underappreciate the consequences of the nascent strategic competition. Moreover, such a competition generates a dynamic within the system that is essentially at odds with the logic of the transnationalisation of governance, trade, and finance, in which the importance of the nation-state is gradually diminishing. Instead, the rise of multiple centres of power responds more closely to 19th century international affairs. The following sections lay out several ways in which the tension between these two modes of politics will erupt or be resolved.

The shifting distribution of relative capabilities does not determine *how* state elites will respond strategically, but does predict *that* they will feel the need to respond. However, while, as neorealism argues, states respond to external pressures, I argue here that the manner in which these structural tensions will erupt or be resolved lies at the unit level, shaped by domestic ideas, interests, and institutions (Rose, 1998; Rynning, 2002; Dueck, 2006; Layne, 2006; Dyson, 2010). Specifically, I focus here on increasing distrust of elites and of internationalism, and on civil-military relations , namely whether the armed forces are part of the political competition or whether they are strictly controlled but largely autonomous (Huntington, 1954; Desch, 1998).

Multipolarity and grand strategy

United States

In the 1990s Barry Posen and Andrew Ross (1996) described four possible grand strategies open to the United States in the post-Cold War period: isolation, selective engagement, primacy, and collective security/liberal internationalism, with each succeeding option representing an increase in military and/or diplomatic engagement. The U.S. arguably followed a course between primacy and liberal internationalism in the first decade after the Cold War. It maintained its extensive military deployments abroad, including now secure Europe, maintained defence spending higher than the next twenty states (including Western allies) combined, continued investment in cutting edge military hardware, and sought Full Spectrum Dominance (dominance in air, land, maritime, and space domains, and information environment). The collective security organizations and agreements established during the Cold War were maintained, and, in the case of NATO, used to expand American power into the former sphere of influence of the old adversary. The Bush (II) era removed ambiguity whether the US was seeking primacy, and even public statements from that era contain the idea that American 'forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in hopes of surpassing, or equalling us'¹.

The wars in Iraq and Afghanistan undermined the support base for this global strategy by weakening American legitimacy, economy, and military hard power. The demands of nation-building had led to an emphasis on counterinsurgency and dependence on the land-based army and marine units, a far cry from Rumsfeld's attempt at 'shock-and-awe' with minimal boots on the ground during the invasion in Iraq. Under pressure to control its budgets, the Pentagon has been called on to find cuts to the tune of \$487 billion over the next decade, although compared to an annual budget that approximates \$1000 billion when every defense related expenditure is accounted for, makes the cuts less impressive. In any case, American grand strategy will be forced to reprioritize. For example, the 2011 QDR scaled back the ambitions of the 1997 QDR to the less ambitious planning assumptions of fighting and winning one major war while being able to meet and 'spoil' any aggressive designs by a second adversary. The strategic pivot² to the Pacific represents the most important reprioritization, and statements from the administration, such as President Obama's claim that the 21st century will be a Pacific century³, illustrate the extent to which the importance of Asia has become paramount. The U.S. is already reducing its global military footprint in relatively secure regions and shoring up its assets in Asia and the Pacific. For example, since 2011 7000 American troops have been withdrawn from Europe, and redeployed to South and East Asia, and in 2012, after a 26-year stand-off on nuclear issues, the U.S. lifted a ban on visits by New Zealand warships to U.S. bases around the world, with the US and New Zealand agreeing to cooperate on maritime security, counter-terrorism, and peacekeeping operations.⁴ Moreover, the diminished focus on nation-building and other lower intensity tasks

¹ Bush, G. (2002) National Security Strategy of the United States. Washington, D.C.: White House.

² Wan, W. (2012) Panetta, in speech in Singapore, seeks to lend heft to U.S. pivot to Asia. Washington Post, 1 June.

³ The Atlantic. (2011) Obama's Plan for America's Pacific Century. The Atlantic, 11 November.

⁴ Alexander, D. (2012) U.S. lifts ban on New Zealand warships, New Zealand keeps nuclear-free stance. Reuters, 21 Sept.

demonstrates a refocus on potential great power conflicts. The armed forces are, at least partially, moving away from the post-Iraq/Afghanistan land-based COIN doctrine to the navy and air force-based Air-Sea Battle doctrine. These capabilities are intended to counter China's growing maritime role.

These developments should be seen together with the shift towards less restrictive and more flexible forms of multilateralism, which has been taking place during both the Bush and Obama administrations (Van Hooft, forthcoming). This is part of a larger trend that has been taking place over the past decades. Krause (2004) signals increasing scepticism towards multilateralism, driven by frustration over traditional avenues of influence such as the United Nations and the World Trade Organization. This led to a decreased willingness on the part of American policymakers and public during the 1990s to contribute to and compromise with multilateral organisations. As Jeffrey Legro (2012) argues, the American response has been to shift from global multilateral forums to other arenas in the international system such as regional organizations, bilateral webs and even non-state transnational links. These moves point to an increased desire for and focus on flexibility, which in turn reflects an American hegemon less certain of exercising its power through the established institutions built in the Cold War. As Secretary of State Clinton phrased it in 2010: if some nations "don't want to join, we will press ahead with others".⁵

The cumulative effect of these developments suggests that American grand strategy can now be best characterised as selective engagement or partial primacy, underlining that the US has definitely moved away from collective security / liberal internationalism.

Europe

The consequences for Europe of multipolarity and the resulting shift towards a US grand strategy of selective engagement are varied, and in turn will impact the fundamentals of the multilateral order. A unifying Europe has clearly not become a challenger to American unipolarity, nor have the intra-European rivalries reignited as realism predicted (Mearsheimer, 1990). Realist theory offers different interpretations for this lack of response: European states have hedged with the US against one another and against a possible resurgent Russia, to create an advantageous balance of power within Europe (Art, 2009), or conversely, while the Europeans avoided hard balancing, they were soft balancing the US through the acquisition and development of interventionary and power projection capabilities (Posen, 2006). The continued role for NATO in the transatlantic relationship both enabled the Europeans to avoid making difficult national or European choices about security and the US to safeguard its global influence. The lack of an overt challenge to the US or other European states is derived from secondary effects of US security guarantees provided through NATO. The centrality of NATO also had other consequences, namely by establishing a transnational elite on matters of foreign policy and defence.

Europe's armed forces have especially been transformed through their role in NATO, working towards and converging on common projectionary capabilities (King 2011, Dyson 2011). These represent a move away from the large scale conscript forces needed for collective defence within Europe during the Cold War, towards smaller professional units able to undertake interventions and nationbuilding outside Europe. However, because this has

⁵ Council on Foreign Relations. (2010) A conversation with U.S. Secretary of State Hilary Rodham Clinton. Council on Foreign Relations. 8 Sept.

largely taken place through NATO, the US has disproportionately shaped the commonly shared strategic concepts, threat appraisals and solutions. This applies to Great Britain, Germany, the closest and most enduring transatlantic relationships, and to a lesser but increasing degree to France since its full reintegration into the NATO political and military command. Especially relevant here are the smaller European states that lack the ability to independently conduct comprehensive threat analysis, conduct military R&D, and anticipate doctrinal developments.

The likely strategic pivot of the US will have consequences for current European force postures. The Europeans may adapt to the American shifts in doctrine and focus, either by taking on certain security tasks or by changing their niche roles. The former seems to be happening with the Franco-British defence agreements towards greater cooperation in terms of pooling R&D, and building shared power projection and interventionary capabilities, of which the joint aircraft carrier is the clearest example. As with previous instances of British–French rapprochement this seems to have been triggered by changes in the external environment. However, problems of pooling defence resources remain, whether in the acquisition of planes that cannot land on the joint carrier or ambiguity if preferences for their usage differ (the South Atlantic dilemma). For Germany and smaller European states the U.S. reorientation presents a more specific challenge. For reasons of history and size respectively, several European states have tried to develop niche positions (Rickli 2008) complementary to the US and the larger European powers, where they deliver the ‘soft’ capabilities (peacekeeping, reconstruction, nationbuilding), after the more powerful states have intervened with more traditional conventional war-fighting capabilities. The extent to which these abilities will continue to be valuable in light of the move away from precisely these kinds of difficult missions towards more traditional uses of military force is unclear, but it will force these states into difficult choices.

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These developments in turn are likely to have negative consequences for the future of NATO, and, while the longevity of NATO has been questioned before, there several reasons that the current pressures are more serious. To begin with, the experiences over the past ten years in Iraq, Afghanistan, and Libya have offered unconvincing lessons to the U.S. on the continued feasibility of current transatlantic arrangements. The end of the International Security Assistance Force (ISAF) operations in Afghanistan in 2014 represents the finale of NATO’s longest-running mission, where member states actually fought together and with significant troop contributions from most members. Signals from the various capitals suggest that exhaustion, expenditures and general lack of confidence in the strategic outcomes in Afghanistan have made it unlikely that any state is willing to make similar major long-term commitments in reconstruction and nationbuilding any time soon. While this means the source of tensions that surrounded joint campaigning will come to an end, it also means that there is less immediacy to better integrate European capabilities (beyond the budget restraints of the age of austerity). The operational weaknesses demonstrated in the Libya mission have also dampened enthusiasm for more limited missions. The Europeans were unable to sustain the bombing campaigns against Gadhafi’s forces and began running out of munitions within weeks of the start of operations. In 2011, then-Secretary of Defense Robert Gates pointed out that, while Operation Unified Protector was a mission with widespread political support, not involving ground troops, in Europe’s neighbourhood where European vital interests were at stake, it clearly demonstrated major shortcomings in European capabilities. Gates argued that NATO risked turning into a two-tiered alliance that consists of members who specialize in ‘soft’

humanitarian, development, peacekeeping, and talking tasks, and those conducting the 'hard' combat missions. This lack of equitable burdensharing – in American eyes– together with new generations of American policymakers with less memories of the cooperation of the Cold war years, is leading to a declining appetite and patience on the part of the U.S. Congress and the larger American polity, to expend limited resources on behalf of nations that are apparently unwilling to devote the necessary resources to their own national interests.⁶

A retrenchment of American strategy is therefore likely to undermine NATO for which the US still provides most of the infrastructure and hardware. However, it has now become less likely that the US will continue to undermine European efforts to build a rival organization of NATO, in terms of the ESDP. The extent to which the European Common Security and Defence Policy will fill this gap is unclear, or whether a series of bilateral agreements can take its place. In other words, whether European security arrangements in the near future will continue to be globalized, become more strictly regionalized, or some hybrid form due to renationalization, has become an open question.

China

Historical precedence suggests that rapid transitions in power that upset traditional arrangements heighten the chance of open conflict. Radical shifts in power distribution and the parallel uncertainty about the overall hierarchy in the international system has been linked to the likelihood of systemic wars (Organski and Kugler, 1980). The rapid rise of the Asian powers, China and India foremost, could have consequences for peace and stability in Asia and the Pacific, specifically since the US has traditionally also perceived its interests there. Competition over international rulemaking, access to resources, specific symbolic issues that are seen as signs of status, are therefore likely to increase. It is therefore quite tempting to see, as many commentators do, parallels to the drastic changes late nineteenth and early twentieth century in Europe, when Germany experienced its own high growth that challenged British hegemony and led to the outbreak of the First World War. However, the German search for maritime power equivalent to that of the British was not driven by structural incentives per se, but by the (mistaken) beliefs of the Wilhelm II and the high command that Germany needed or could build these capabilities without provoking a British reaction and alignment with France. (Strachan 2004) Chinese policymakers have been aware of these parallels and are actively trying to avoid the German and Japanese mistakes of aggressive expansion that provoked countervailing alliances.

The evidence of balancing behaviour by China is mixed. The official Chinese policy has been of 'peaceful rise' (*zhōngguó hépíng juéqǐ*), with the reiterated stated goals to develop economically, increase the welfare of its own citizens and challenge no one. Beijing's priorities have so far been clearly domestic, and its stated foreign policy priorities are summarized as 'sovereignty, security, and development'. The course of keeping a low profile and bidding time (*tao guang yang hui*) ion which Deng Xiao-Ping set Chinese foreign policy in the 1970s seems to be paying off. Therefore, most of the perceived threat of China to American unipolarity lies in its consistent rapid

⁶ Gates, R. M. (2011) The Security and Defense Agenda (Future of NATO), As Delivered by Secretary of Defense Robert M. Gates. NATO-Brussels, Belgium, 10 June.

economic growth (10-14% annually⁷, but slowing down). While military spending has annually increased by over 12%⁸, somewhat outpacing economic growth, military multipolarity is as of yet far off. Chinese defence spending as a percentage of GDP may be persistently increasing, it still remains less than half of the percentage of GDP (2,1%) that the US spends annually (4,8%), and in absolute numbers they are incomparable (for the US \$689 billion in 2010 Dollars, and for China \$129 billion in 2010 Dollars).⁹ Chinese objectives have until recently been mainly concerned with issues Beijing considers matters of national sovereignty, namely Tibet and Taiwan.

However, it is also clear that China is modernising its armed forces, slowly but surely transforming them from strictly national defence tasks towards greater expeditionary capabilities. The most overt sign of this is the expansion of China's maritime capabilities towards a blue water navy, including the acquisition of its aircraft carrier. The value of the carrier is debatable but it does at least suggest a desire to compete in terms of prestige. While official Chinese policy remains a 'harmonious ocean', its influence is seen to be spreading to the string of pearls: maritime strategic choke points of the Strait of Mandab, Strait of Malacca, Strait of Hormuz and Strait of Lombok. The Chinese government is also developing deep-water ports in Pakistan, Myanmar, and Sri Lanka, and is discussing other potential sites in Bangladesh and Nigeria (Economy, 2010). As US is planning for confrontations with China, China is preparing for confrontations with the US. In 1999 two PLA colonels wrote a book on military strategy - '*Unrestricted Warfare*' - a prescription to overcome American conventional dominance by conceptualizing warfare encompassing all possible instruments. The strategic competition is evidenced not only by the military build-up: China is ensuring access to the Indian Ocean and hedging against India by establishing alliance between China and Pakistan, which is the strategic partnership 2011 between India and Afghanistan. The clearest sign of counterbalancing US power is the Shanghai Cooperation Organisation (SCO), which China and Russia founded together with Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. China and Russia's existing rivalry has not impeded looking for ways to counter American unipolarity.

11

China had been content to adhere to a non-interventionist support for state sovereignty, which appealed to states in the developing world for its stark contrast to American and Western tendency towards liberal interventionism over the past two decades. Yet, China's new found power has increased appeals for greater contributions to international public goods. As its interests and influence grow, it is taking a greater role in policing the global commons by maintaining regional order, and maritime security. Chinese contributions to UN peacekeeping missions have increased; it is increasingly acting against terrorism and piracy (Christensen, 2011). China's policy has become less country-oriented and more multilateral and issue oriented, such as its cooperation with India against Western pressures to limit carbon emissions (Wang 2011).

⁷ World Bank, World Development Indicators (WDI) and Global Development Finance (GDF), 2007-2011; Branigan, T. (2012) China's economic growth slows to 7.6%: Second-quarter GDP growth in world's second largest economy falls to lowest rate since depths of financial crisis in 2009. The Guardian, 13 July.

⁸ Hoyos, C. (2012) Chinese defence budget set to double by 2015. Financial Times, 13 February.

⁹ Sipri Military Expenditure Database 2011

Domestic level sources of instability

United States

American domestic politics seems less and less suited to allowing the US to continue to play its global role, due to both demographic changes and increasingly more inward-looking populism. The on-going demographic shift in American electoral politics means that the share of second or third generation immigrants from Europe is decreasing, while proportion of Latin American citizens is increasing. Furthermore, for the past decades American population has been moving Westwards, and the relative share of the traditionally pro-European Eastern seaboard in American cultural and political life has been declining (Walt, 1998). Europe has become something far less appealing. The 2011 and 2012 Republican primaries and the subsequent Presidential election provided several instructive examples that for a large part of the polity there is little interest to formulate a serious foreign policy vision or to take major allies into account. These ranged from dismissive remarks about European allies by the (eventual) Republican Presidential candidate and his rivals¹⁰, to one of his other contenders categorizing a NATO ally as a terrorist state¹¹. While these remarks should be considered offhand and insubstantial, they also reflect a certain carelessness by using foreign policy to score relatively minor domestic points. They also suggest that the transatlantic name-calling during the crisis over Iraq might have been less an exception than a preview of the future.

The tough talk is a symptom of a larger trend of increasing polarization across all issues of American politics over the past twenty-five years. As a 2012 study by the Pew Research Center found, both Republicans and Democrats have become smaller and more ideologically homogenous. Among Republicans, conservatives outnumber moderates by a ratio of about two-to-one, and there are now as many liberal Democrats as moderate Democrats. In fact, American values and beliefs are more polarized along partisan lines than 'at any point since Pew started measuring.'¹² Polarisation has gone hand-in-hand with an increasingly inward-looking focus on the part of the public: currently 42% of both Republicans and Democrats agree that more attention should be focused at home rather than abroad.¹³ Differences are, however, apparent whether the best way to ensure peace is through military strength, with 44% of Democrats currently agreeing, but more than 70% of the Republicans. As Yankelovich (2005) states: 'on a broad array of foreign policy issues, there is no majority stance. Instead, polarized groups of Americans glare at each other

¹⁰ Mitt Romney could boil down his critique of the Obama administration's taxes and spending on healthcare with the shorthand that Obama 'wants to turn America into a European-style social welfare state'. Finnegan, M. (2012) Romney's critiques of Europe raise some questions. Los Angeles Times, June 29; "If you're an entrepreneur and you're thinking of starting up a business, you need to ask yourself: Is America on the same road as Greece? Are we on the path to an economic crisis like that we're seeing in Europe, in Italy and Spain?" (Hooper, J. (2012) Mitt Romney botches another Italian job as anger lingers over Bain coup. Guardian, 1 Nov; Romney himself was attacked by fellow presidential hopeful Newt Gingrich for the time he spent in France and his ability to speak French, a somewhat (non sequitur) insult. Harris, P. (2012) Newt Gingrich's attack ad gives Mitt Romney a French dressing-down. The Guardian, 13 January.

¹¹ "Well, obviously when you have a country that is being ruled by, what many would perceive to be Islamic terrorists, when you start seeing that type of activity against their own citizens, then yes. Not only is it time for us to have a conversation about whether or not they belong to be in NATO, but it's time for the United States, when we look at their foreign aid, to go to zero with it," Perry said. Oliphant, J. (2012) Turkey, State Department blast Rick Perry's 'Islamic terrorist' remarks. LA Times, 17 Jan.

¹² The Pew Research Center for the People and the Press. (2012) Partisan Polarisation Surges in Bush, Obama Years. Trends in American Values: 1987-2012. The Pew Research Center for the People and the Press, 4 June, p1-2.

¹³ The Pew Research Center for the People and the Press. (2012) Partisan Polarisation Surges in Bush, Obama Years. Trends in American Values: 1987-2012. The Pew Research Center for the People and the Press, 4 June, p77.

across deep chasms.’ Nor should the outcome of the 2012 elections necessarily imply that there will be a return to the political centre: moving to the right has worked out well for the Republican Party over the past decades.¹⁴ The longer trend of culture wars is driven by a decrease in cultural homogeneity and a backlash against liberal values. Consequently, over the past decades the emphasis on American exceptionalism has increased (Mead, 2011), and in foreign policy terms, many American conservatives unify around the belief in America’s unique virtue and they are therefore reluctant to adapt to the rise of new centers of power, preferring to instead rely on ‘coalitions of the willing’ or a ‘concert of democracies’(Wade 2011).

These debates had direct effects on the global position of the US in different ways. A clear example was when the Tea Party driven debate in 2011 over raising the debt ceiling diminished the US credit rating, thus undermining American leadership. This has been a longer trend over the past decades, with examples including U.S. resistance to the Kyoto Treaty, the International Criminal Court (ICC), and the Mine Ban Treaty (MBT); Anti-Ballistic Missile Treaty (ABM); and the clashes in the UN over Iraq. For example, 34 Senators opposed the UN Convention on the Law of the Sea (UNCLOS) since it would impinge on US sovereignty, even though it would actually increase US economic and resource jurisdiction and help contain the maritime power of China in South East Asia and the Pacific, (Wright, 2012). This shift has led to a still broadly cooperative American grand strategy, but one where bilateralism, flexibility, and ad hoc coalitions of the willing have become more prominent.

Just as declinism is a recurring feature of American political debates (Wohlforth, 2012), some similarities exist with the period in the 1970s when the aftermath of Vietnam, the Iran hostage crisis and the military power parity with the Soviet Union proved the catalyst for the neo-con movements. The question is, even if the decline of the US is only relative and not absolute, whether domestic politics can adjust its expectations to a world where the US is no longer the only superpower.

The underlying problem is the centrality of credibility, especially for Democrats. Obama’s foreign policy presidency can be characterised as partially rebuilding the weakened multilateral ties, and partially to avoid the appearance of weakness while diminishing the American military role, as evidenced in the dependence on special forces and drones. American civil military relations are still cohesive, but a structural weakness exists when the armed forces have higher approval ratings than congress. Furthermore, organizational pressures and interservice rivalries between the Air Force and Navy on the one hand and Army and Marine on the other over the budget could create a force posture – Air-Sea Battle - that appears more hostile than it needs to be.¹⁵ Together with the overall disillusionment liberal internationalism the conditions exist for American administrations to over-depend on the show of force. In combination with the polarization of domestic politics, serious doubts can be raised about the US ability to produce a cohesive and coherent grand strategy to underpin current multilateral structures. Instead, it is more likely that the US will oscillate between unilateralism – as in primacy – and constrained selective engagement directed at specific regions.

¹⁴ In (1980) the Reagan revolution gave Republicans control of the Senate for the first time in decades; (1994) the Gingrich revolution control of the House; (1998) the impeachment of Bill Clinton; (2000) the presidency; and in (2010) a landslide midterm victory by Tea Party candidates . Drum, K. (2012) The Tea Party Is Dead. Long Live the Tea Party. Mother Jones, 9 Nov.

¹⁵ Jaffe, G. (2012) US model for a future war fans tensions with China and inside Pentagon. Washington Post, 2 August.

Europe

Over the past twenty years European unification has offered the best example of the transnationalisation of governance. The many overlapping and intersecting mandates and governmental structures suggested a possible example for global politics, expressed as normative power Europe. However, the broader economic crisis and the debt crisis specifically have undermined the base for the project. Most visibly, it has exposed the economic discrepancies and political cleavages within Europe between the wealthy Northwest and struggling South, and this has led to a striking number of nationalist references and back-and-forth insults. The crisis has strengthened and increased the number of political groups sceptical of the European project and these have moved from anti-immigration to a broader anti-elite and anti-internationalist manifestos (Kriesi, e.a., 2008). To the populist radical right, globalisation is a multifaceted enemy, where, according to Mudde (2007), all three major subtypes of globalization – economic globalization (associated with neoliberalism and immigration), political globalization (exemplified by the NWO), cultural globalization (seen as Americanisation) - are feared and rejected upon the basis of the same nativist beliefs: they threaten the independence and purity of the nation-state. The populist radical left, similarly rejects these three types of globalisations for different, but equally powerful, motives: the monoculture, the inequality, and the pressure towards Western universalism. The uncertainty generation by the liberalisation of trade and finance, has exacerbated the fears in the more unequal societies (Burgoon, 2011; Zürn, e.a., 2012).

This populist backlash interacts with an overall decline of trust in politicians and the institutions of representative democracy that has been eroding in most established democracies since the 1990s (Pharr and Putnam, 2000; Dalton, 2004; Dalton, 2005; Newton, 2006; Kaina, 2008). This assessment has been challenged, and Pippa Norris (2011) instead posits that there is no long-term trend of decline of public support for the political system until 2007, although there are sharp fluctuations of support within countries over time (Norris 2011 57-82). While the overall trend might be uncertain, the notion of national interests and the benefits of internationalist policies are abstract and distant compared to the main day to day practice of politics and far removed from the daily concerns of citizens, and are consequently predominantly driven by and associated with national elites. The stresses caused by the Eurocrisis are likely to push more inward-looking policies, also among the states with previously impeccable internationalist credentials.

For example, in 2010 the Netherlands did not extend its mission in Afghanistan in spite of a formal NATO request, which followed unofficial assurances by the Christian Democrat (CDA) foreign minister that such a request would be accepted. The Labour Party (PVDA), as the other major coalition partner of the government, refused, leading to the collapse of the government coalition. These decisions by the Labour Party seemed to be predominantly driven by fears that the populist appeal of the further-left Socialist Party was draining support from the Labour Party and the consequent need to make a statement and force elections. The punishment from the U.S. was clear: withdrawal of support to Dutch presence at the G20.¹⁶ Another example, was when in 2011 Germany abstained in voting on Libya in the Security Council, and opted out of contributing logistically to the NATO bombing campaign, even withdrawing

¹⁶ From Wikileaks; (2009) cable from The Hague embassy to Secretary of State on Netherlands/Afghanistan: Engaging Labor Part Leader Bos – part of the “Getting to Yes” Strategy for Extending Dutch Deployment in Afghanistan Post-2010. 9/18/2009/FM/Embassy the Hague.

its support personnel from NATO command in Italy. Basic disinterest on the part of the public, analytical uncertainty, and a strong inward-looking focus on economic crisis management all serve to explain the hesitancy of the German government, in spite of criticism on the part of its major allies. These examples suggest that short-term domestic political costs and benefits shaped policy rather than long-term national or internationalist interests.

There are structural factors that will further undermine European contributions to multilateralism. The transnational European elites for foreign and defence policy are relatively narrow and disconnected from both domestic publics and governments. To a greater extent than in the US, European members of governments have increasingly have less direct experience with military affairs. The ties between transnational military elites – built through NATO – with one another are in some ways stronger than within the national hierarchy, in terms of shared strategic concepts, doctrine and threat assessments (King, 2011). Consequently, there is less understanding of the possibilities and limits of European military power. The drop in support for activist foreign policies, suggests that the current built up knowledge within the armed forces on nationbuilding, peacekeeping, and counterinsurgency has become less valuable. The current lack of interest in similar operations within the US, further undermines the value and cohesion of the current European military profiles. This undermines the ability to cohesively project power and build sustained European grand strategy, and thus undermines the possibility normative power Europe to play a global role as a supporter of the multilateral frameworks.

China

The position of Chinese foreign policy towards the regional and global order will also depends on domestic politics, specifically how well the Chinese government will remain able to control the pressures and harness the rewards of its prodigious successes. However, the fruits of economic growth are spread unevenly, with China having one of the most unequal societies globally. The one-child policy created an advantageous demographic distribution for most of past three decades, although it has created a highly disadvantageous aging problem in the coming decades, leading to the fear that 'China will get old before it gets rich'. There is the concomitant 'missing women' estimated at 30 million girls aborted or killed after birth. Hypernationalist movement such as the 'angry young men' (*fenqing*) are already an increasing online presence. Economic uneven development between the coastal urban centres and the hinterland has led to massive migratory flows within China. Moreover, a growing and increasingly prosperous middle class will also demand accountable government. The lack of trust in the government is subdued but manifests itself in the number of wealthy Chinese placing their money overseas¹⁷ and the estimated hundred thousand protests each year (Economy, 2010). These already point to structural instabilities that the government will have to deal with. The question here is whether the Chinese economy can sustain its growth, better distribute the wealth, and broaden political participation while maintaining the paradoxical combination of stability and dynamism of the past decades.

The signs are ambiguous. Economic growth is slowing down, partially because Chinese prosperity is undermining its competitiveness, and because of the effects of the crisis dampening demand in the American and European

¹⁷ (2012) Officials, looking for an exit strategy, send family and cash overseas. *The Economist*, 26 May.

markets.¹⁸ There is evidence of a housing bubble already exists and with 50% of Chinese capital is invested in the construction sector¹⁹, that represents a serious possible structural weakness. Whether this leads to a crash of the Chinese economy or merely presents a minor speedbump in China's rise is impossible to tell. Whatever the case, possible disappointments for a generations of Chinese used to constantly in increases in incomes for their hard work, will multiply the difficulties for and pressures on the Chinese government. Internal turmoil might be channelled through more nationalist and extremist groups may force the government into a more assertive international policy, especially if Chinese prestige is undermined by American policies.

As noted, successive Chinese governments have worked hard to avoid the appearance of aggression, and have proved adept at managing domestic tensions. However, members of the PLA consistently signal less patience with constraints on China's position within Asia, suggesting a growing civil-military gap in which Chinese military elites tend to be more intensely nationalistic as well as more hard-line towards the United States and Taiwan (Scobell, 2009). Several events during 2009 and 2010 seemed instructive: when Chinese ships harassed the US Navy ship *Impeccable* in international waters in 2009; at the ASEAN Regional Forum in July 2010 Chinese Foreign Minister Yang warned Southeast Asian States to not coordinate with outside powers in managing territorial disputes with Beijing; in 2010 demanding an apology and compensation from Tokyo after Japan detained a Chinese fishing boat captain; and also in 2010 when Chinese officials warned the US and South Korea twice against conducting naval exercises in international waters near China (Christensen, 2011). China is also adopting a more aggressive stance on territorial disputes in the South China Sea, as outspoken PLA officers, intelligence advisers and maritime agency chiefs are arguing that China should more forcefully assert its sovereignty over the sea and the oil and natural gas believed to lie under the sea-bed.²⁰ Most recently, in 2012, a dispute between Japan over China over what Japan calls the Senkaku Islands and China the Diaoyu Islands showed how easily nationalist passions in both countries can escalate, with Japanese factories and dealerships coming under attack. The increased number of flashpoints suggest that perceived weakness on the part of the US provoked attempts at signalling Chinese resolve. Unlike earlier generations of Chinese leaders, the current generation of civilian policymakers have no experience within the armed forces and lack the immediate legitimacy to assert control. Currently, neither of the two major superpower has any direct issue with the other, and the costs for both of escalation would be great. However, the domestic drivers noted above are undermining coherent and cautious responses to managing the redistribution of global power.

The strategic use of multilateral organisations

A more hybrid and mixed global order will have several short-to-midterm consequences for state policies. First, the lack of coherence at national or intergovernmental level adds to overall uncertainty and increases the costs of cooperation. Second, the reservoirs of legitimacy built up in the existing multilateral structures with great effort over

¹⁸ Somerset-Webb, M. (2012) The Caustic soda connection. *Financial Times*, 27 July.

¹⁹ Somerset-Webb, M. (2012) The Caustic soda connection. *Financial Times*, 27 July.

²⁰ Lague, D. (2012) China's Hawks gaining sway in South China sea dispute. *Reuters*, 25 July.

the decades, offer opportunities to compete over and exercise raw power and soft power. Under the condition of increasing multipolarity, states are therefore likely to use existing multilateral institutions more strategically to gain relative in the short term advantages as well as depend more on the flexibility of bilateral or trilateral agreements.

State competition within a more dynamic environment will play out both along and against traditional alliances and the developed-developing states divide. For example, after the 1997-1999 East Asia/Russia/Brazil crisis, G7 Finance ministers and central bankers realized that a larger and more inclusive deliberative group had to be convened. In contrast to their general limited and informal multilateralist preferences, here the Americans campaigned for a bigger and more representative grouping than that on offer in the more modest European proposal. Behind the normative flag of 'more representation,' the United States wanted to bring in more U.S. allies to limit perceived European overrepresentation in both the World Bank, IMF, and many other multilateral organisations (Wade 2011). The negotiations over World Bank voting shares presented a shift to dynamic emerging economies only, part of a larger package that included changes in the composition of the seats on the board. Here the United States forced the 'advanced European' countries to give up two of their eight seats on the Fund's twenty-four-seat board. In doing so, the United States showed its commitment to a power shift from Europe to the South, can expect the states that benefitted to show gratitude (Wade 2011).

The most overt illustration of the specific interactions between traditional power politics and a broadly supported multilateral system seems to be the evolving debates on the reform of U.N. Security Council. While the composition of the Security Council has always been flawed and barely (if that) reflected the actual power distribution of the immediate post-Second War World, it fares even poorer in light of the contemporary distribution of economic, demographic and political power. Consequently, there is a clear need to address the legitimacy gap by adapting these institutions towards greater representativeness. The inclusion of the group of four states (Germany, Japan, Brazil, and India) seems an obvious inclusion, based on their economic and/or demographic sizes. Unsurprisingly, the P5 powers (the U.S., Russia, PRC, U.K., and France) have tried to retain as much influence until now. However, the changing power distribution is reordering this discussion.

First, support of the P5 states for new members is conditional on the possibility of balancing the other P5 members. The United States has supported the access of Japan for a decade and has more recently put its support behind an Indian candidacy in order to balance Chinese influence within Asia.²¹ It has even appeared to offer some signal to support for Brazilian accession.²² Yet, the United States has also blocked German accession to limit the already disproportionate influence of European states on the Security Council, frustrating the plans of one of its most

²¹ US supported candidacy of Japan unequivocally for the Security Council already in 2005, after it had set aside three previous proposals. (Hoge, W. (2005) U.N. Envoys see loss of steam for expanding security council. New York Times, 18 Nov. "By endorsing India for a permanent seat on the United Nations Security Council, President Obama on Monday signaled the United States' intention to create a deeper partnership of the world's two largest democracies that would expand commercial ties and check the influence of an increasingly assertive China. ... Mr. Obama's closer embrace of India prompted a sharp warning from Pakistan, India's rival and an uncertain ally of the United States in the war in Afghanistan, which criticized the two countries for engaging in "power politics" that lacked a moral foundation. Gay Stolberg, S. Yardley, J. (2010) Countering China, Obama Backs India for U.N. Council. New York Times, 8 Nov.

²² Powell appeared in 2004 to back Brazil's candidacy, but this support was worded in a manner which was careful and conditional. Hoge, W. (2004) U.N. tackles Issue of Imbalance of Power, New York Times, 28 Nov.

reliable partners.²³ Similarly, China, in spite of its counter-hegemonic rhetoric of solidarity among developing nations, has resisted allowing those rising powers greater access.²⁴ To illustrate, the aspirations of its major regional rival, India, for a permanent seat in the Security Council have at this point been explicitly endorsed by all P5 nations except China. Claims of India-China friendship, or shared membership in BASIC, do not make unresolved border disputes disappear, stop India making agreements with Afghanistan, or China making arms deals with Pakistan. While China might claim support for a more multipolar global order, it would prefer a bipolar order with itself and the United States as the main powers and where it can balance American influence.²⁵ Second, it is not only the P5 powers who are blocking a more representative Security Council. Traditional regional geopolitical rivals –organised in the Uniting of Consensus (UfC) group - are working to limit the membership of the G4: Pakistan (India), Italy and Spain (Germany), South Korea (Japan), Argentina and Mexico (Brazil), and others.²⁶ Since the reform process depends on consensus voting, the G4 accession to the council was considered indefinitely postponed, although this could very well change due to smart diplomatic manoeuvring by the G4 states aided by a bloc of African nations.²⁷

Transnationalisation, and renationalisation, and a hybrid global order

As the overview above demonstrates, there is a clash between economic transnationalisation and the emergence of transnational elites on the one hand and the trend towards inward-looking nationalist and populist demands as well as state-led strategic competition on the other. This tension is further played out against the institutional backdrop of armed forces that have become more autonomous, whether through greater popular appeal or through friendly disinterest, and are therefore more disconnected from civilian policy-makers. These developments are not confined to the U.S., Europe, and Asia, but represent broader global trends of democratic or authoritarian populism in Latin America, the Middle East, and Russia, as a result of increased overall economic volatility and increasing political volatility. This does not necessarily imply that intensification of competition is imminent but that the cost-benefit assessments of actors are undergoing significant shifts as more inward-looking policies become more attractive for the foreseeable future. In turn, this will have consequences for how states respond to a more multipolar world.

In the short-to-medium term the weakening of the appeal of liberal internationalism in the U.S. and Europe translates into the weakening of established fundamentals of western multilateralism, the EU and NATO. Europe and European military capabilities no longer have the same strategic value to U.S., as long as American grand strategy shifts to the Pacific Ocean. European armed forces may transform alongside current American doctrinal shifts as they

²³ Weisman, S.R. (2005) U.S. Rebuffs Germans on Security Council Bid. New York Times, 9 June.

²⁴ “China aims for a bipolar world in which it serves as the counterbalance to American power. Despite the flowery language of China’s public communiqués, documents published by Wikileaks demonstrate that behind closed doors China has long opposed efforts to accommodate other rising powers by giving them a seat on the Security Council.” Ladwig, W. (2012) An Artificial Bloc Built on a Catchphrase. New York Times, 26 Mar. “The United States has promised to support a promotion for Japan and now India. China is viewed as far less eager for its Asian neighbors to acquire permanent membership in the Council.” Gay Stolberg, S. Yardley, J. (2010) Countering China, Obama Backs India for U.N. Council. New York Times, 8 Nov.

²⁵ Ladwig, W. (2012) An Artificial Bloc Built on a Catchphrase. New York Times, 26 Mar.

²⁶ Weisman, S.R. (2005) U.S. Rebuffs Germans on Security Council Bid. New York Times, 9 June.

²⁷ Sharma, V. (2011) How Germany, Japan, Brazil & India beat Pakistan, Italy, Argentina & Korea in UN diplomatic war. Real Time News India, 25 July.

have for the past decades. This could underwrite a European effort to supplant U.S. contributions towards regional European security and that of bordering regions, and towards building even greater expeditionary capabilities complementary to the U.S. Here again, the lack of appeal of internationalism and European unification in the short term undermines such efforts. Instead, a series of bilateral efforts may emerge, along the lines of British-French cooperation.

At present China does not seem to have the ability or interest to play a supporting role to current multilateral structures. It is also questionable if it has the soft power to appeal more broadly to create such an order. Pushback from rising powers against American power specifically, like SCO and BASIC, is therefore likely to be contained to regional initiatives. Its rising status is pushing China towards ensuring its access to resources and maritime routes. When China asserts itself too strongly, it is likely to trigger countervailing alliances by India, Japan, Australia, and smaller Asian states, and there is enough evidence to suggest that this is already taking place. The cheaper option for China might be to provide regional public goods through cooperative efforts. This might be especially attractive when China will have to perform its economic recalibration after the unlimited growth of the past decades. The future is not bleak, but these trends suggest that China will not function as a global supporter in the short to medium term.

The pressures of multipolarity, together with the significant trend of re-nationalisation, is likely to push the global order towards an unstable hybrid of multi-tiered and region-centric arrangements. Along these more fluid sets of arrangements, there is greater opportunity and incentive for states to use the already established multilateral frameworks strategically. Capitalising on these uncertainties will, however, undermine what legitimacy these frameworks have, as well as the institutionalised trust built up over multiple decades. More optimistically, such a trend of the strategic use of international organisations may be countered by a number of middle- and small powers in Europe and Asia. These states seem to have the least to gain by the dismantling of existing multilateral frameworks, as it gives them leverage vis-à-vis the superpowers and constrains their behaviour. The more level playing field that exists under multipolarity may allow them to play different larger states off against each other, which in the long term strengthens the viability of the frameworks. Better mapping out the interplay of domestic and international factors is essential to understanding how these conflicting trends will play out.

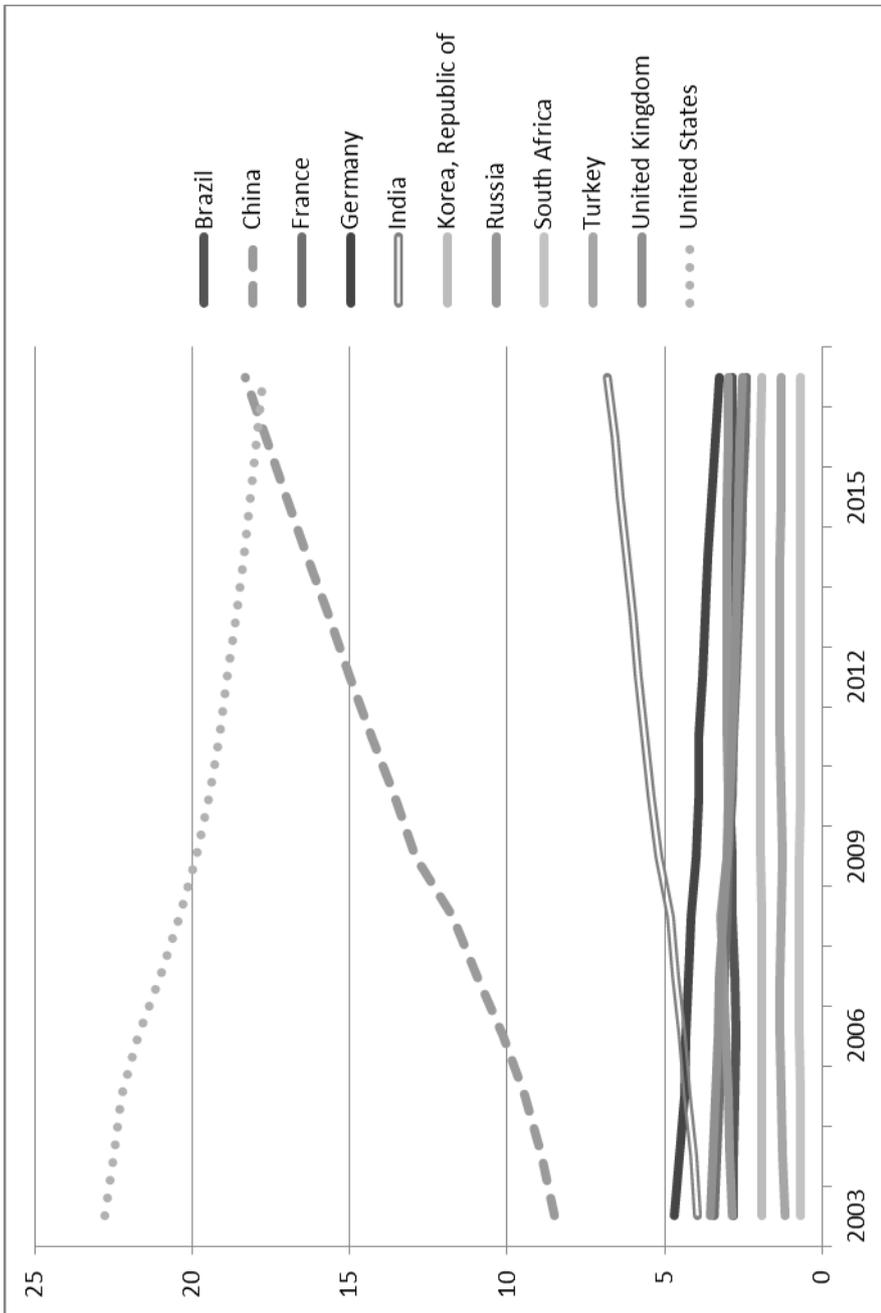


Figure1. IMF. World Economic Outlook (April2012). Share of Global GDP: 2003-2017(expected)

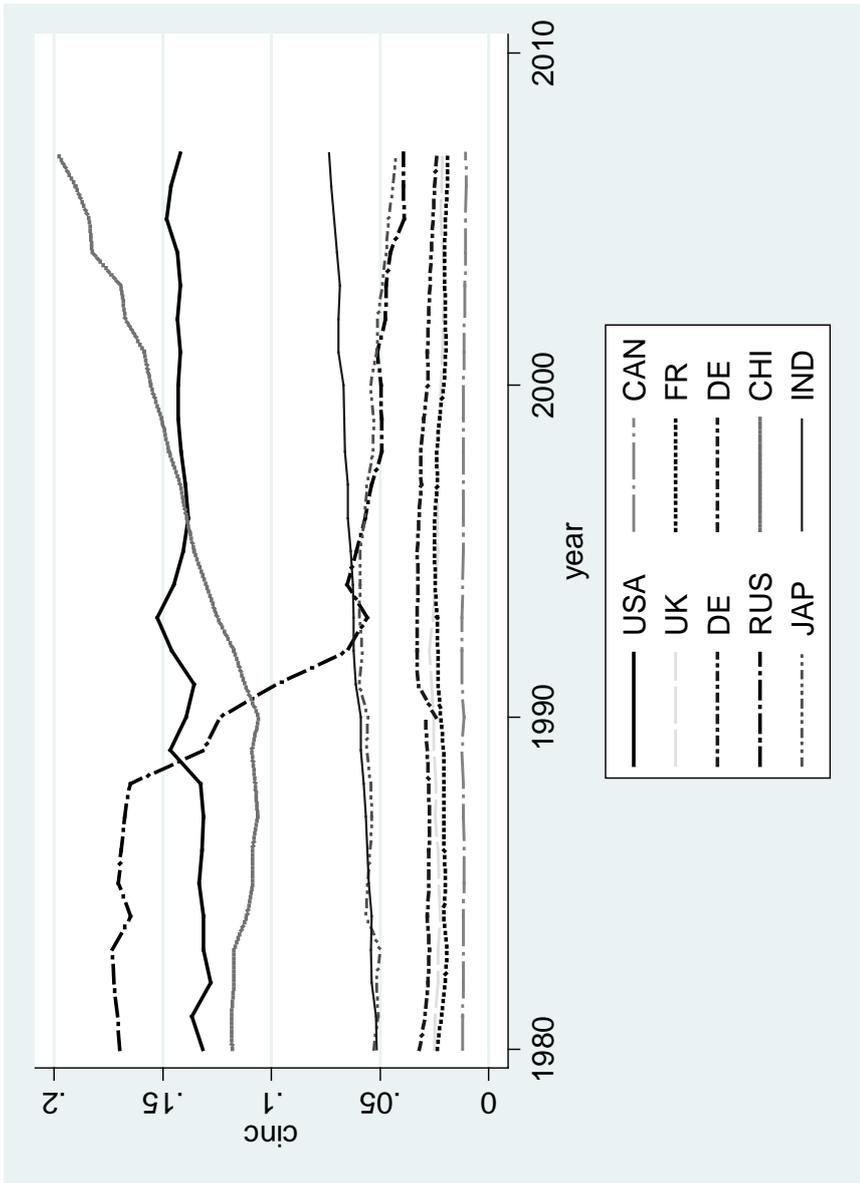


Figure 2. National Material Capabilities (1980-2005). CorrelatesofWarDatabase.

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