

## Chapter 15: The EU in the World: From Multilateralism to Global Governance

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### [A] Introduction

The international system of 2016 is different from how it was 25 years ago when the Maastricht Treaty was negotiated, creating the tension between national foreign policies and a common European foreign policy upon which this book focuses. 1991 was the beginning of a decade of liberal internationalism, manifested in the globalisation of world economy, the creation of the World Trade Organization (WTO – the only alteration to the architecture of the multilateral system designed post WWII, c.f. Ikenberry 2001), and the networking of transnational governance between states (Slaughter 2004). It was also the decade of genocide in Rwanda and ethnic cleansing in the Balkans, shocking events that challenged the norm of non-intervention in the domestic affairs of states and led to the 1999 bombing of Kosovo in the name of humanitarian intervention. Europeans and Americans appeared to be re-writing the rules of Westphalian sovereignty, and the *sui generis* nature of the European Union and its foreign policy based on shaping international norms played a central role (Manners 2002). For many Americans, this era ended on the 11 September 2001; for the rest of the world it ended on 15 September 2008, the day Lehman Brothers bank collapsed and the US sub-prime mortgage crisis and subsequent recession spread globally. While the eurozone was mired in crisis, emerging economies led by China, India and Brazil remained virtually unscathed by the great recession and demanded political influence in multilateral institutions commensurate to their growing economic stature. Commentators see an international system undergoing ‘partial repolarisation’ (Crocker 2015: 9), leading to a ‘world

adrift' characterised by the 'unregulated diffusion of authority, agency and responsibility' (ibid: 15), caused by the 'rise of the rest' (Zakaria 2008) and creating a post-hegemonic 'no one's world' (Kupchan 2012).

This chapter focuses on the 'frozen configurations of privilege and bias' (Barnett and Duvall 2005: 52) found in the International Monetary Fund (IMF), United Nations Security Council (UNSC), and the (reformed since 2005) UN Committee on Human Rights (CHR) that are increasingly called into question. EU member states (particularly Western Europeans) are the primary beneficiaries of these frozen privileges as a legacy of their close cooperation with the US after WWII and their significance in the global economy during the Cold War. These are paradigmatic cases for this book because they represent the most significant and conspicuous platforms for EU member states' national foreign policies, while simultaneously being core components of EU foreign policy goals and constitutive elements of the EU's international identity, namely (i) upholding international peace and security (which both the UNSC *and* IMF were originally tasked with cf. Kennedy 2006), (ii) the universal promotion of human rights, and (iii) contributing to effective multilateralism (European Council 2003).

Large and small EU member states use international organisations to pursue national foreign policy goals, working within (Modes 2 and 3) and without (Mode 4) of European coordination structures. Yet in order to enhance the voice and influence of the EU, the answer is thought to lie in more Mode 1 and 2 actions. These cases demonstrate the tension between national ambitions for prominence on the international stage as sovereign states and aspirations for greater EU actorness through Europeanised foreign policy. The selection of cases represents variation in the degree of adjustment to partial repolarisation. In terms of human rights promotion,

the numerical advantage of European states in the CHR was addressed in the 60<sup>th</sup> anniversary UN reforms in 2005 through the creation of the Human Rights Council and increased representation of African and Asia UN members. Changes to the voting shares and Executive Board composition to favour emerging economies and diminish European power were agreed by IMF members in December 2010 and were formally adopted in December 2015 after the US Senate passed legislation securing the necessary number of national parliament ratifications. Reform of the UNSC remains on the political agenda, albeit far off.

The chapter presents overviews of each case in turn, summarising context, member state groups, policy changes and policy performance. It concludes that foreign policy Europeanisation is not achievable against the interests of the largest EU states in the organisations regarded as most salient for national projection – the UNSC and the IMF. When reforms have been made, the visible costs to Europeans have been compensated by benefits that are harder to discern, yet nonetheless significant. It argues that Mode 4 action is an effective foreign policy instrument in a multilateral system increasingly comprised of important non-European players.

[A] Commission on Human Rights & United Nations General Assembly

[B] Context

EU member states have been committed to the protection of human rights (HR) within and without their borders for decades. The Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* was ratified by many West European countries during the 1950s, and by Central and Eastern European

countries in the 1990s, demonstrating the importance of HR in their national policies. For EU external relations, the importance of promoting human rights through frameworks of cooperation with third states has been of concern since the late 1970s. The two stand-out issues were Uganda's receipt of Lome I funds despite Idi Amin's regime of domestic brutality, and the accession of recently democratised Greece (1981), Spain and Portugal (1986) to the EEC (Riedel and Will, 1999: 723; Clapham, 1999: 632). The first clause permitting the termination of assistance programmes for cases of HR violations was inserted into the 1989 Lome IV agreement with African, Caribbean and Pacific (ACP) states, and similar clauses now appear in all EU cooperation agreements. After the end of the Cold War, the prospect of EU membership for former communist states became a reality and the June 1993 Copenhagen European Council agreed that respect for HR was essential for EU accession. Simultaneously in Vienna, the UN World Conference on Human Rights was taking place, aimed at reasserting human rights protection through the UN system freed of superpower stalemate. It was therefore an opportune moment for the EU to make promoting HR a constitutive value in its international identity and continues to this day. '[P]rotection and promotion of human rights is a silver thread running through all EU action both at home and abroad' (European Commission, 2011:4).

Promoting HR in the UN system was a logical step for EU member states. In the mid-1990s, there were three main UN bodies tasked with HR promotion; the Security Council (UNSC), the General Assembly (UNGA), and the Commission on Human Rights (UNCHR), a subsidiary body of the Economic and Social Council. The UNSC was reserved for the most serious violations and required the agreement of the veto-holding permanent members. The UNGA was dominated by states from the Non-Aligned Movement (NAM) and enthusiastically protected sovereignty over HR. In the

UNCHR EU member states found it relatively easy to gain a majority of votes in support of resolutions thanks to UN membership expanding more quickly than revisions to the distribution of seats. There was a frozen bias in favour of representing the original members of the UN system at the expense of newly independent states in Africa and Asia. As will be elaborated below, the reformed Human Rights Council ‘unfroze’ this bias, making it much harder for EU states to pass resolutions. Table 15.1 presents the two distributions of seats.

Table 15.1: Distribution of seats by region, UNCHR and HRC

	WEOG	Eastern Europe	Latin America	Asia	Africa
UNCHR	10	5	11	12	15
HRC	7	6	8	13	13

Since the purpose of Part II is to look at state actions, the abolition of the death penalty is used to illustrate the evolution of EU actions once numerical advantages were removed.

#### [B] Policy Change

In 1994, the Italian government presented a resolution to the Third Committee of the UN General Assembly calling for the abolition of the death penalty. Although it attracted 49 co-sponsoring states, the resolution failed to gain a majority and some EU member states regarded it as too premature an effort (neither the UK nor Netherlands supported it). In 1997, the Italian government succeeded in passing a resolution on the same issue in the UN Commission on Human Rights (UNCHR), in large part due to WEOG, Eastern Europe and Latin American states occupying 26 of the 53 seats. In 1998, Italy steered another resolution through the Committee, and in 1999 the Finnish

Presidency presented another in the name of EU member states (Bantekas and Hodgkinson, 2000: 23; Smith, 2006: 160). EU resolutions on other issues were passed in subsequent years, and only women's reproductive rights and gay rights being beyond the scope of cooperation. Mode 2 action superseded Mode 3 action, in both cases coupled with wider Mode 4 outreach.

In 2005, at the 60<sup>th</sup> session of the UN General Assembly, the decision was taken to replace the UNCHR with the Human Rights Council. A number of steps were taken to depoliticise the promotion of HR, including allocating more seats to Asian and African countries to more accurately reflect UN membership. EU member states continued with Mode 2 actions, but despite higher levels of voting cohesion than were achieved in the UNCHR, they repeated found themselves in the minority because of the rebalancing of region constituencies (Gowan and Brantner, 2008, Kissack, 2010, Smith, 2010, Grassy and Spolander, 2012, Macaj 2012). Faced with difficulties in the HRC, EU member states made a surprising strategic decision. Beginning in 2006, the EU campaigned for a moratorium on the use of the death penalty in the UNGA, a venue typically seen as the bastion of the Global South and the very antithesis of frozen privilege (Kissack, 2010; 2012). It was an unlikely place to promote such a divisive issue as ending the use of the death penalty. Nevertheless, Finland read a statement with 87 co-signatory states to the General Assembly in support of such a step. It was the start of a campaign that continues to the present day, slowly but surely heading toward a tipping-point where the norm of restricting the use of the death penalty will be widely accepted (Finnimore and Sikkink 1998).

## [B] Policy Performance

In 2007, the Portuguese EU Presidency coordinated the drafting of a resolution on the death penalty to be presented to the General Assembly's Third Committee (Social, Humanitarian and Cultural Affairs). If passed there, it would be taken to the General Assembly. Italy had attempted the same thing in 1994, but failed to gain even the support of all 12 EU member states, let alone the majority of UN members. The death penalty is a permitted punishment under international law and traditionally seen as a matter of domestic legal practice to be discussed in the General Assembly's Sixth Committee (Legal). Presenting the issue in the Third Committee framed the death penalty as a human rights issue and removed it from the sphere non-intervention in the domestic affairs of a sovereign state into a legitimate issue for UN-level scrutiny under the Charter. As the Ambassador of Singapore said during a Third Committee plenary session discussing the matter in 2008, the 'basic issue in question before us today is not capital punishment per se. That is not at all what this resolution is about. [...] It is about whether a country has the right to decide on this matter for itself' (UN, 2008). A resolution calling for a moratorium on the use of the death penalty and for the UN Secretary General to report on the use of the death penalty worldwide (A/RES/62/149) was passed in 2007. In 2008, a shorter resolution acknowledging the report presented by the Secretary General and calling for the issue to be revisited in two years was also passed. Since then, in 2010, 2012 and 2014, gradually more ambitious resolutions have been passed by greater margins, as shown in Table 15.2.

Table 15.2: Voting results in the UNGA for Resolutions on a Moratorium on the Use of the Death Penalty

	2007	2008	2010	2012	2014
For	104	106	109	111	117
Against	54	46	41	41	37
Abstention	29	34	35	34	34

The EU should be acknowledged as a driving force behind the successful campaign to pass the resolutions, but it cannot take all the credit. There are a number of important factors to consider. Firstly, the change in focus from abolition to moratorium nearly broke EU consensus on the resolution before it began. Hawkish HR states, led by Sweden, Finland and the Netherlands, were reluctant to dilute the ambition of the resolution from the 2006 statement. While they were around 20 states short of support, they preferred to wait than concede too early, while Italy advocated a result (in keeping with its long-term commitment to the issue). The issue was resolved *outside* of the EU27, as Portugal liaised with the nine states co-authoring the resolution, demanding collective control over drafting the resolution without the EU dictating from afar. Portugal used this to gain a high degree of agent autonomy from its 26 member states principals, playing a two-level game (Putman 1988) to force the EU into accepting text agreed by the ten co-authors using ‘tied-hands’ arguments.

This leads to the second point. The resolution was co-authored by ten states from the five regions of the UN system (Portugal, Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, Philippines and Timor-Leste), making it genuinely trans-regional instead of explicitly European. The composition of states was influenced by the EU Presidency, which utilised relations with Lusophone states to identify co-authors. Other EU member states were assigned third countries to lobby support for the resolution, tapping into linguistic and historical extra-European networks of influence. The passing of the resolution was a major foreign policy achievement for the EU, somewhat ironically given that the co-authors convinced the EU member states that a *lower* EU profile was desirable, so as to discredit opposition grounded in claims of neo-imperialism. The 2008 French EU Presidency oversaw the coordination

of co-authors for the following year's resolution, and in recent years (2012 and 2014) the responsibility of coordinating follow up resolutions has been taken up by Chile.

This case shows how Mode 3 action between EU states in the UNCHR developed into Mode 2 action as the rotating Presidency assumed responsibility for coordination and representation of HR-promoting statements, coupled in both cases with Mode 4 action to non-Europeans. However, when the WEOG, Eastern Europe and Latin American states required more than just a couple of Asian or African states to achieve a majority, as in the reconfigured HRC, the EU found it difficult to promote common positions despite increased coherence under Mode 2. The EU took up the case of the death penalty, by promoting a moratorium on its use in the UNGA, confronting head-on a more adversarial venue. The passing of the 2007 resolution can be attributed to increased Mode 4 action, including a feedback loop into the Mode 2 EU common position negotiations to placate the doubts of hawkish states reluctant to do deals at any cost. Losing frozen privileges was overcome by more communication with other states, and accommodating the wider consensus of UN members within the EU common position.

[A] The International Monetary Fund

[B] Context

The purpose of the IMF was to maintain international financial order in the years after World War II, by helping 'maintain pegged but adjustable exchange rates, primarily between the industrialised countries of Western Europe and the United States'

(Vreeland 2007: 5). To do this, it performed ‘two main tasks: (1) to monitor members’ economies – especially their exchange rates and balance of payments, and (2) to act as an international lender’ (Vreeland 2007: 9). The funds available for lending are raised through members’ deposits (‘quota’), ‘calculated on the basis of a set of formulae combining the ability to contribute, that is, national product, and the need for Fund resources, calculated on the basis of countries’ vulnerability to external shocks linked, in particular, to openness to international trade’ (Bini Smaghi 2009: 64). Voting rights are allocated proportionally to quotas, meaning that the largest economies in the world are also the most powerful members of the IMF. Historically, since the creation of the IMF, Western European states have been among the richest in the world and 70 years after its creation still control around 30 per cent of votes.

The IMF has a 24-member Executive Board, and each member – or Executive Director (ED) – represents a single state or group of states. Prior to the December 2015 adoption of the 14<sup>th</sup> General Review (IMF 2015), the US, Japan, Germany, France and the UK were the five largest contributors to the IMF and were automatically allocated seats. Some states, such as China, Russia and Saudi Arabia, also occupied single seats, while the remaining 180 members belong to constituencies represented by one member. Some, such as Belgium, the Netherlands and Italy, were defacto permanent EDs, while others rotated the duties of ED among constituency members. Consequently, it was normal for six EU member states to be present on the Executive Board, occasionally rising to eight or nine depending on the rotation within groups. Debate about the merits of this situation is divided between those advocating more coherent representation ((McNamara & Meunier 2002, Garnier *et al.* 2006, Wouters, & Kerckhoven 2012, EU 2015), those advocating better coordination of (especially eurozone) EU states but not their elimination (Bini Smaghi 2004; 2009,

Pisani-Ferry 2009), and those who question the feasibility of such changes within the structure of the IMF (Broome 2012).

[B] Member state groups

As of January 2016, EU member states are represented by ten different EDs. As shown in Table 15.3, they are classified into five different types of representation: (i) national ED, (ii) de facto permanent ED by virtue of being largest member of a constituency, (iii) occasional ED as part of a rotation in a constituency, (iv) constituency member represented by another EU member state, and (v) constituency member represented by a non-EU member state. Some groups are based on linguistic blocs, others on geography, others on rank within the IMF, such as the G-5 (US, Japan, Germany, France and the UK) that contain the majority of international banks within their financial systems (Breen 2013). The reforms to the governance structure agreed in the 14<sup>th</sup> General Review meant that the Big-Three states will now have to be voted onto the Executive Board like other EDs, while countries used to being permanently represented on the Board will have to take a back seat as two Europeans are replaced by non-Europeans among the 24 EDs. For these states, their national prestige is clearly knocked, as the gap between them and Britain, France and Germany will widen.

Table 15.3: Division of EU member states in IMF Executive Board as of 1 January 2016 (Largest member underlined)

Germany
France
United Kingdom
Belgium, Bulgaria, Croatia, Cyprus, Luxembourg, the <u>Netherlands</u> , Romania (plus 8 non-EU)
Greece, <u>Italy</u> , Malta, Portugal (plus 2 non-EU)
Denmark, Estonia, Finland, Latvia, Lithuania, <u>Sweden</u> (plus 2 non-EU)
<u>Austria</u> , Czech Republic, Hungary, Slovak Republic, Slovenia (plus 3 non-EU)

Spain (plus 7 non-EU)
Poland (plus 7 non-EU – largest Switzerland)
Ireland (plus 11 non-EU – largest Canada).

EU member states have historically been reluctant to give up national representation in the IMF. Although the creation of the euro meant that control over monetary issues relevant to IMF scrutiny of members' economies had been ceded to the European Central Bank (ECB), Germany and France were among the strongest voices rejecting calls for more coordinated representation (Broome 2012). Pisani-Ferry compared the voting rules of the IMF with the EU Council and argued that member states with EDs enjoy greater voting power in the IMF than in the EU, explaining their preference for the status quo (Pisani-Ferry 2009). One reason for this is that EDs vote with the aggregate total of their constituency, thus capturing the votes of members and magnifying power. The euro crisis and the establishment of much tighter EU oversight of national budgets (the 'Two pack' and the 'Six pack') elevated the question of EU representation in the IMF up the political agenda. In summer 2015, Juncker (2015) produced a report on 'Completing Europe's Economic and Monetary Union', to which the European Commission generated a number of policy proposals. Regarding the IMF, a three-step proposal for 'more consistent and effective external representation of the euro area' required '(i) strengthening coordination among member states of the euro area; (ii) improved representation of the euro area within the IMF; and (iii) once the necessary adjustments to the IMF governance are made, a unified representation and single seat for the euro area' (EU 2015). The Commission is advocating replacing Mode 4 representation with Mode 1, consistent with expectations that legal competencies shape foreign policy making.

## [B] Policy change

Until the euro crisis, there was little discernable common EU policy in the IMF. The agenda of the Executive Board concerned lending to low and middle income states and reviewing adherence to conditionality. There is a considerable literature on the politics of these lending decisions, centring predominantly on degree of political influence exerted by the US (Dreher et al 2009) and the degree of bureaucratic autonomy of IMF staff (Broome 2012). Stone (2004) produces evidence showing Britain and France soften conditionality to former colonies, while Breen (2013) argues that Britain, France and Germany as G-5 members have strong interests in seeing the IMF bailout states on the verge of defaulting on sovereign debt to private banks. While there are weekly meetings between European EDs in Washington (Bini-Smaghi 2004), according to one former ED they consist of informing each other of instructions received from national capitals and focus on avoiding conflicting positions, rather than establishing coherent common ones.

The decision to lend \$2.1bn to Iceland in October 2008 was the first IMF loan to a Western European country since 1976. While large, it was dwarfed by standby agreements (credit lines) provided to Hungary (\$15bn), Latvia (\$2.4bn), Romania (\$17bn) between winter 2008 and spring 2009, followed by even larger loans to Greece (€30bn), Ireland (€22.5bn) and Portugal (€22.5bn) between 2009 and 2011. These loans were made possible after lending rules were changed in May 2010 to permit an 'Exceptional Access Policy' that in theory applies to all members but to date has only been used in these cases (Pisani-Ferry et al 2013: 85). As a consequence of lending to EU member states, the IMF has become increasingly intertwined with the European Commission and ECB. The Troika both designs structural reforms and

monitors compliance with them, resulting in some non-EU IMF members expressing grave doubts about the reputational costs to the IMF (Pisani-Ferry et al 2013: 86).

Without doubt, EU member states have used the IMF during the euro crisis for a number of reasons to further various (and not necessarily complementary) goals, of which four are most clearly identifiable (Kissack forthcoming). The first is wealthy, Northern European eurozone members (Germany, Netherlands, Finland, Belgium, Luxembourg, France) seeking to transfer the adjustment costs of the eurozone to the IMF. By framing the crisis as a threat to systemic stability, the IMF can be legitimately called upon to help, providing around 30 per cent of the funds securing the monetary union. The second is closely related, and concerns free-riding on the reputation and expertise of the IMF. The European Commission had no experience of handling financial crises, and financial market scepticism of its abilities risked increasing the cost of the bailout. For the same member states wishing to transfer adjustment costs to the IMF, it also provided a greater guarantee of success. Hodson (2014) argues too that the Council delegated monitoring duties to the IMF in parallel to the Commission to prevent against agent slippage. The third reason is that G-5 members use the IMF to protect private banks in their national jurisdiction from sovereign debt default (Breen 2013). The bailouts were in effect an enormous transfer of debt from private to public institutions, justified as the risks of banking collapse constituted a threat to an already fragile international financial system. Private banks in Germany, France and the UK were exposed to €250bn of bad debt from Greece, and €600bn factoring in the property market collapse in Ireland (Breen 2013: 107-111). The final reason for turning to the IMF for help was that for the states receiving the loans, it offered a counterweight to the terms offered by the EU (and driven by German rejection of underwriting the debts of other states). As early as November

2008, at the meeting of G-20 Heads of State in Washington, IMF Managing Director Dominic Strauss Kahn presented a Keynesian inspired solutions to the global recession, and under Christine Lagarde the IMF has maintained its softer stance of debt relief, clashing publicly with the EU (BBC 2015).

#### [B] Policy Performance

The fiscally sound members of the eurozone that balk at the thought to paying the debts of other off members have used the IMF to their advantage. The crisis has been averted, new rules are in place to consolidate oversight of national budgets, and the European Stability Mechanism Treaty provides a framework to resolve future problems. The treaty formalises cooperation between the IMF and the EU in co-funding new loans (Art. 13), pointing to agreement by all eurozone members (the treaty is an intergovernmental agreement) that IMF cooperation is desirable. Since its signing in 2012, positions on have changed, with Germany questioning the continued need for IMF participation, especially when its interventions go against the policy preferences of Berlin. To this end, locking in the IMF is a safeguard for states requiring loans because it provides a credible alternative to austerity-driven policies. However, whether the IMF will serve this role in future is uncertain because it is likely to limit its contribution to European bailouts to ten per cent (Pisani Ferry et al 2013), thus allowing it to exit reforms programmes it does not agree with, while maintaining sufficient funds to lend to other IMF members. Frozen privileges remain significant determinants of EU member state behaviour, and mode of action. The IMF has been used to further the interests of its most powerful members, and above all Germany and states supportive of its strict position on dealing with the crisis. France

was for much of the crisis aligned with Germany, and had common interests in the protection of its banks, but saw the IMF as a way of locking in more left-leaning economic policies. Mode 4 will remain the dominant policy strategy for the foreseeable future.

[A] United Nations Security Council

[B] Context

The most conspicuous frozen privilege in the multilateral system is the allocation of five permanent seats with veto powers in the UNSC. Alongside the US, China and Russia are France and the UK, and although neither has used their veto since 1991 (Hill 2006), their continual presence at the heart of the Security Council gives them a formidable platform for pursuing their foreign policy goals. EU member states benefit from bias in the allocation of the ten rotating seats on the UNSC, with two allocated to the WEOG and one to Eastern Europe, permitting a maximum of five out of fifteen seats occupied by EU countries.<sup>1</sup> Participating in the UNSC elevates states to the role of executives charged with overseeing the most important of all UN activities, namely maintaining international peace and security. The purpose of the UNSC was to delegate decision making power to a small group of UN members that could respond quickly to international crises, and during such times the UNSC meets daily and the 15 work around the clock to drafting resolutions and monitoring events. Of the EU28, only Estonia and Latvia have not served on the UNSC, showing how widely member states see the significance of participation.

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<sup>1</sup> Cyprus belongs to the Asia group and therefore makes the theoretical maximum number of EU members six, although it is yet to serve on the Council.

The current constitution of the UNSC is widely seen as deeply problematic. Its permanent members were identified during the drafting of the UN Charter in 1945 and omitting countries such as India, Japan, Germany and Brazil (G-4) is argued to reduce the legitimacy of the Security Council. Although this chapter is not about UNSC reform, mapping where various EU member states stand on reform reveals their preferences for enhancing their national foreign policies.<sup>2</sup> Where states stand in terms of their own ambitions for future participation is informative when considering their voting on key resolutions. Britain and France, as existing permanent (P5) members, accept that other states have equal entitlement to the powers they enjoy, and support limited reforms to increase the legitimacy of their continued privilege. As a member of the G-4, Germany regards itself as a prime candidate for enjoying an enhanced role in a reformed UNSC. There exists a group of states opposed to the G-4, led by neighbouring rivals (Italy, Mexico, Pakistan, South Korea and others) under the name of Uniting for Consensus. Italy is a founding member of the group, and Spain is another prominent European member and is using its UNSC membership for 2015-16 as a platform to raise awareness of the reform agenda during the 70<sup>th</sup> anniversary of the UN.<sup>3</sup> Finally, there is the integrationalist position that the long-term goal of the Union should be an EU-seat replacing the member states (Mode 1) and enjoying the privileges of veto. The EU is fundamentally divided on the question of UNSC reform because of its largest members' rival ambitions, demonstrating the importance of the UNSC for national foreign policies.

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<sup>2</sup> The key issues on reform that different groups argue over are (i) the number of additional seats (generally accepted at ten), (ii) the distribution of those seats, (iii) the method for allocating them (permanent or renewable terms) and (iv) use of the veto by new members and P5.

<sup>3</sup> <http://www.spainun.org/en/2015/03/the-reform-of-the-security-council-is-possible/>

## [B] Policy Change

The Lisbon Treaty states that when the ‘Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union’s position’ (Lisbon Treaty Art. 19 §b (iii)). The High Representative, as well as EU Special Rapporteurs, have addressed UNSC open sessions, which in turn are part of the push to make the Council more transparent by holding some meetings in public. Yet evidence from practitioners shows that open sessions push the ‘real’ discussions into behind closed doors where the 15 members set the agenda and negotiate resolutions. Drieskens (2009) argues that when EU member states sit on the UNSC they are rapidly socialized into Council routines, immersed in the ongoing agenda and required to take positions on all issues under consideration. While EU member states may be more or less disposed to greater CFSP cooperation and willing to use their UNSC membership as a bridge to other member states when they begin their two-year term, sooner or later the need for confidentiality to ensure the trust of other UNSC members wins over. This reality is also recognised in the Lisbon Treaty, in the *Declarations Concerning the Provisions of the Treaties*. The ‘provisions covering the Common Foreign and Security Policy ... will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, ... including a Member State's membership of the Security Council of the United Nations’ (Declaration 14 Concerning the Provisions of the Treaties OJ 306/255 17.12.2007). EU member states have legally protected their obligations as sovereign states acting in the UNSC, prioritizing Mode 4 action.

The UNSC agenda covers a number of policy issues, ranging from norms setting (for example, women and security in the follow up to UNSCR 1325 c.f. Barbe forthcoming), peacekeeping and humanitarian actions (Chapter XX), to the use of force to maintain international peace and security. This section focuses on the latter issue, as the decision to use military force is arguably the most important action a sovereign state can make. According to international law, the use of force is only permitted in self-defence or when sanctioned by the UNSC. As the EU has no military capacity of its own, the use of force is always a decision for national governments, but the European Security Strategy confirms the EU's commitment to the same norms by saying 'the fundamental framework of international relations in the United Nations Charter' (European Council 2003: 9). We will consider two cases, the American-led intervention in Iraq in March 2003 and the decision to use force to protect 'civilians and civil populated areas' in Libya in March 2011. In both cases, some EU member states deployed military forces, but in the former UNSC authorisation was not forthcoming, while the latter secured approval. It focuses on the roles played by France and the UK as permanent members, Germany, Italy and Spain as aspiring enhanced members, the position of other EU states on the UNSC at the time, and decisions to support (or not) military action.

#### [B] Policy Performance

During the 1990s, the international community continued to monitor Iraq's capacity to produce chemical, biological and nuclear weapons under its post Gulf War obligations to disarm. The inspection regime was reinforced when UNSCR 1284 (1999) established a subsidiary body of the Security Council, the United Nations

Monitoring, Verification and Inspection Commission (UNMOVIC), to concentrate on the Iraqi situation. The United States, under the Presidency of George W. Bush and as part of the War on Terror following the attacks of 9-11, initially increased diplomatic pressure on Iraq to terminate its programmes. After a breakdown in the inspection regime in autumn 2002, the UNSC passed Resolution 1441, setting out the steps necessary for Iraq to comply with its disarmament obligations. The penultimate paragraph states that ‘the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations’ (UN 2002: §13). As Gordon and Shapiro (2004) detail in their excellent account of events, opinion was divided over whether a second resolution would be needed to use military force against Iraq, if it did not comply. German Chancellor Gerhard Schroeder, who had narrowly won the national election in September 2002, based his campaign on opposing any war with Iraq and would not support any intervention. Although France eventually opposed military action, French military officials were in the US in early 2003 planning their participation in strikes against Iraq. Iraq made a number of concessions to the demands of UNSCR 1441 that drove a wedge between France and the UK and US; France indicated it would veto a draft resolution prepared on 7 March 2003 by Spain, the UK and US giving Iraq an unequivocal 10-day ultimatum (UN 2003). While a veto by China and Russia could have been tolerated on the grounds of representing moral vindication; a veto by France would be more damaging to the legitimacy of action than no resolution at all. On 20 March, the US invaded Iraq with the assistance of many states, including the UK, Italy, Poland, the Netherlands, Spain, Denmark and Portugal, as well as smaller deployments from nine Eastern European countries.

The consequences of US Secretary of Defence Donald Rumsfeld's division between 'new' and 'old Europe' are well known. Two letters demonstrate how widely supported US action was in Europe. The 'Letter of Eight' published on 30 January 2003 in a number of leading newspapers was signed by existing NATO members the Czech Republic, Denmark, Hungary, Italy, Poland, Portugal, Spain (a UNSC member at the time) and the UK. A week later, a 'Letter of Ten' from Eastern European non-NATO members Albania, Bulgaria (a UNSC member at the time), Croatia, Estonia, Latvia, Lithuania, the Republic of Macedonia, Romania, Slovakia and Slovenia echoed their support for the US. Alongside France and Germany in opposition to action were Belgium, Luxembourg and Greece, and the neutral states of Austria, Ireland and Sweden. This case was one of the most public and divisive splits between EU states on a foreign policy issue and led to a further questioning of the viability of a common foreign policy. The publication of the European Security Strategy in December 2003 went some way towards closure on the rift.

In February 2011, the Libyan government of Colonel Gaddafi began violently repressing peaceful protests and the situation quickly escalated into a civil war, with civilian areas targeted by government forces. The 17 February 'Day of Rage' drew international attention to the situation, and within a week a UNSC resolution condemning the violence was passed, Libyan membership of the League of Arab States (LAS) was suspended, the African Union issued a statement of condemnation, and the UN Human Rights Council opened a committee of inquiry. As government violence increased, the Security Council referred the situation to the International Criminal Court. The LAS stopped short of calling explicitly for regime change but it made an unprecedented declaration on 12 March when it called for the UNSC "to

bear its responsibilities towards the deteriorating situation in Libya” (Williams and Popken 2011: 254). Five days later, a French, Lebanese and British drafted resolution was taken to the Security Council mandating the use of military action to enforce no-fly zones over Libya protecting civilians and civilian populated areas (Doyle, 2011). With the support of the US and members of the League of Arab States openly calling for military action, China, Russia, India, Brazil and Germany abstained from voting and UNSCR 1973 was passed (UN, 2011), allowing France, the US and the UK to begin military strikes, initially in defence of the city of Benghazi. European Council President Van Rompuy and High Representative for Foreign Policy Ashton issued a joint statement declaring that the ‘European Union is ready to implement this Resolution within its mandate and competences’ (Van Rompuy and Ashton, 2011). This did not resonate with the divide in the Security Council between France, Britain and Portugal supporting the resolution and Germany, fearing forces participating in the mission ‘could be drawn into a protracted military conflict [...] decided not to support the resolution and would not contribute its own forces to any military effort that arose from its implementation’ (UN, 2011). Germany remained outside the NATO mission to enforce an arms embargo on Libya that began on 23 March 2011 and incorporated ships and aircraft from Belgium, Denmark, Greece, Italy, Spain, the Netherlands and the UK, together with Canadian, Turkish and US (NATO, n.d.).

Germany’s position was not without merit. ‘The attack on Libya represents an unprecedented moment in the history of the UN Security Council and responsibility to protect. Specifically, resolution 1973 is the first time that the Security Council has explicitly authorised a military intervention against the will of a functioning government for humanitarian purposes’ (Williams & Popken 2011: 249). Nor was it

alone, as China, Russia, Brazil and India all abstained from voting, and South Africa announced soon afterwards it would have preferred to abstain that vote in favour. The conclusions of the European Council meeting of the 24 March 2011 papered over the cracks, stating that the Council ‘expressed its satisfaction after the adoption of UN Security Council Resolution 1973’ (European Council, 2011). But as NATO action protecting civilian shifted to air support for opposition forces, it overstepping its original mandate. On 2 November 2011, the ‘Prosecutor of the ICC briefed the Security Council saying that the allegations of crimes committed by NATO ... would be examined impartially and independently by the ICC’s Office of Prosecution’ (Ulfstein et al 2013: 161). Once again, on the most significant issue before the UNSC the EU was divided.

Comparing the non-UNSC mandated invasion of Iraq in 2003 and the mandated air strikes on Libya in 2011, we see an important difference and some degrees of similarity. The most important difference is their legality, with the latter initially complying with international law until NATO breached its mandate. By contrast, the legal basis for military action in 2003 in UNSCR 1441 is highly questionable. Variation in EU member state support is partially explained by this. But the similarities that exist mean that other factors are at play too. Firstly, the two permanent EU members of the UNSC are crucial actors in determining how events unfold, as expected due to their central position in the policy-making system. They operate in Mode 4 action with the other members three permanent members and ten non-permanent members, of whom one, two or three are fellow EU member states. Where do these other EU member states stand? NATO membership is an important factor to consider both cases, and is another example of Mode 4 action. Support for US-led action against Iraq was gathered through NATO members (bridging EU and

non-EU states) in the Letter of Eight and aspiring NATO members in the Letter of Ten. In 2011, NATO warplanes and warships carried out the air strikes under the UNSC mandate. Similarities exist too in the behaviour of states positioning themselves for greater participation in the UNSC after its (possible) reform. Italy and Spain supported both actions, presenting credentials as security providers capable of force project abroad. Although Germany also aspires to become a more influential UNSC member, it did not support either action in keeping with its great reluctance to send military forces abroad (Kosovo and ISAF being exceptions). In both cases, national foreign policy goals and cooperation with non-EU members were pursued at great expense to common EU foreign policy.

#### [A] Conclusion

This chapter framed the most important issues for EU member states' national foreign policies in the multilateral system in the context of frozen privileges in the UNCHR, IMF and UNSC. The three are at the nexus of EU member states national prestige and the European pursuit of effective multilateralism, pinpointing the tension between national foreign policy and European common foreign policy. The changing distribution of power in the international system magnifies European bias and increases the pressure for reform. In the three cases reform is at different stages of completion, allowing a comparison of EU member state reactions. However, the varying degrees of salience between cases cannot be overlooked as it partially explains the willingness of privileged states to forgo their advantages. Nevertheless, a number of important conclusions are reached.

While Mode 1 action is a goal in the IMF and UNSC for intergrationalists, at best we see evidence of Mode 2 action (UNCHR and HRC). We see plenty of Mode 3 action, such as weekly coordination meetings between IMF EDs in Washington and some co-authoring of UNSC resolutions. By far the most important action in all three cases is Mode 4, such as the P5 in the UNSC, the G-5 in the IMF, and the use of regional co-authors in the UNGA. Mode 4 action also takes place in the background, such as third state lobbying in support of the moratorium on the death penalty resolution, and liaison with the League of Arab states via Lebanon drafting UNSCR 1973. In an international system comprised of increasingly important non-European players, Mode 4 action is essential.

Privilege is a source of power, and in these cases we see that the EU member states with the greatest privileges used them to increase their power inside and outside the EU. In the case of UNSCR 1973, Britain and France *wanted* to bomb Libya, and invested considerable political capital supporting the National Transition Council of Libya in various international conferences (UK Government 2011). Germany, France and the UK used their influence in the IMF to protect their private banking sectors (Breen 2013), while Germany, France and other Northern eurozone states successfully transferred a sizeable proportion of monetary union adjustment costs to the IMF. Crucial to this was the passing of the Exceptional Access Policy in May 2010, which was done prior to reforming voting shares, which lowered EU28 total voting power (Kissack forthcoming). The role of power is discernable too in the case of the UNGA, although operating differently. In the General Assembly, where sovereign equality is highly prized, widespread wariness of the EU (as seen in the efforts to gain enhanced observer status in 65<sup>th</sup> session) meant reducing the EU's profile and emphasizing the ten co-authors. The powerful lead from behind to prevent

the messenger becoming more important than the message. In conclusion, unsurprisingly in important multilateral organisations, *all* EU member states want to maximise opportunities to promote their national foreign policy goals, not least the largest. The challenge for the EU is to stop seeing Mode 4 action as being the antithesis of EU common foreign policy, and accept that it is increasingly essential in the 21<sup>st</sup> century.

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